

111TH CONGRESS  
1ST SESSION

# H. R. 3795

To enact the Over-the-Counter Derivatives Markets Act of 2009.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2009

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To enact the Over-the-Counter Derivatives Markets Act of  
2009.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—IMPROVEMENTS TO**  
4 **REGULATION OF OVER-THE-**  
5 **COUNTER DERIVATIVES MAR-**  
6 **KETS**

7 **SECTION 101. SHORT TITLE.**

8 This title may be cited as the “Over-the-Counter De-  
9 rivatives Markets Act of 2009”.

1       **Subtitle A—Regulation of Swap**  
2                               **Markets**

3   **SEC. 111. DEFINITIONS.**

4       (a) AMENDMENTS TO DEFINITIONS IN THE COM-  
5   MODITY EXCHANGE ACT.—Section 1a of the Commodity  
6   Exchange Act (7 U.S.C. 1a) is amended—

7               (1) by redesignating paragraphs (9) through  
8               (34) as paragraphs (10) through (35), respectively;

9               (2) by adding after paragraph (8) the following:

10              “(9)   DERIVATIVE.—The   term   ‘derivative’  
11              means—

12                      “(A) a contract of sale of a commodity for  
13                      future delivery; or

14                      “(B) a swap.”;

15               (3) by redesignating paragraph (35) (as reded-  
16               ignated by subsection (a)) as paragraph (36);

17               (4) by adding after paragraph (34) (as rededig-  
18               nated by subsection (a)) the following:

19              “(35) SWAP.—

20                      “(A) IN GENERAL.—Except as provided in  
21                      subparagraph (B), the term ‘swap’ means any  
22                      agreement, contract, or transaction that—

23                              “(i) is a put, call, cap, floor, collar, or  
24                              similar option of any kind for the purchase  
25                              or sale of, or based on the value of, one or

1 more interest or other rates, currencies,  
2 commodities, securities, instruments of in-  
3 debtedness, indices, quantitative measures,  
4 or other financial or economic interests or  
5 property of any kind;

6 “(ii) provides for any purchase, sale,  
7 payment, or delivery (other than a dividend  
8 on an equity security) that is dependent on  
9 the occurrence, non-occurrence, or the ex-  
10 tent of the occurrence of an event or con-  
11 tingency associated with a potential finan-  
12 cial, economic, or commercial consequence;

13 “(iii) provides on an executory basis  
14 for the exchange, on a fixed or contingent  
15 basis, of one or more payments based on  
16 the value or level of one or more interest  
17 or other rates, currencies, commodities, se-  
18 curities, instruments of indebtedness, indi-  
19 ces, quantitative measures, or other finan-  
20 cial or economic interests or property of  
21 any kind, or any interest therein or based  
22 on the value thereof, and that transfers, as  
23 between the parties to the transaction, in  
24 whole or in part, the financial risk associ-  
25 ated with a future change in any such

1 value or level without also conveying a cur-  
2 rent or future direct or indirect ownership  
3 interest in an asset (including any enter-  
4 prise or investment pool) or liability that  
5 incorporates the financial risk so trans-  
6 ferred, including any agreement, contract,  
7 or transaction commonly known as an in-  
8 terest rate swap, a rate floor, rate cap,  
9 rate collar, cross-currency rate swap, basis  
10 swap, currency swap, total return swap,  
11 equity index swap, equity swap, debt index  
12 swap, debt swap, credit spread, credit de-  
13 fault swap, credit swap, weather swap, en-  
14 ergy swap, metal swap, agricultural swap,  
15 emissions swap, or commodity swap;

16 “(iv) is an agreement, contract, or  
17 transaction that is, or in the future be-  
18 comes, commonly known to the trade as a  
19 swap; or

20 “(v) is any combination or permuta-  
21 tion of, or option on, any agreement, con-  
22 tract, or transaction described in any of  
23 clauses (i) through (iv).

24 “(B) EXCLUSIONS.—The term ‘swap’ does  
25 not include:

1 “(i) any contract of sale of a com-  
2 modity for future delivery or security fu-  
3 tures product traded on or subject to the  
4 rules of any board of trade designated as  
5 a contract market under section 5 or 5f;

6 “(ii) any sale of a nonfinancial com-  
7 modity for deferred shipment or delivery,  
8 so long as such transaction is physically  
9 settled;

10 “(iii) any put, call, straddle, option, or  
11 privilege on any security, certificate of de-  
12 posit, or group or index of securities, in-  
13 cluding any interest therein or based on  
14 the value thereof, that is subject to the Se-  
15 curities Act of 1933 (15 U.S.C. 77a et  
16 seq.) and the Securities Exchange Act of  
17 1934 (15 U.S.C. 78a et seq.);

18 “(iv) any put, call, straddle, option, or  
19 privilege relating to foreign currency en-  
20 tered into on a national securities exchange  
21 registered pursuant to section 6(a) of the  
22 Securities Exchange Act of 1934 (15  
23 U.S.C. 78f(a));

24 “(v) any agreement, contract, or  
25 transaction providing for the purchase or

1 sale of one or more securities on a fixed  
2 basis that is subject to the Securities Act  
3 of 1933 (15 U.S.C. 77a et seq.) and the  
4 Securities Exchange Act of 1934 (15  
5 U.S.C. 78a et seq.);

6 “(vi) any agreement, contract, or  
7 transaction providing for the purchase or  
8 sale of one or more securities on a contin-  
9 gent basis that is subject to the Securities  
10 Act of 1933 (15 U.S.C. 77a et seq.) and  
11 the Securities Exchange Act of 1934 (15  
12 U.S.C. 78a et seq.), unless such agree-  
13 ment, contract, or transaction predicates  
14 such purchase or sale on the occurrence of  
15 a bona fide contingency that might reason-  
16 ably be expected to affect or be affected by  
17 the creditworthiness of a party other than  
18 a party to the agreement, contract, or  
19 transaction;

20 “(vii) any note, bond, or evidence of  
21 indebtedness that is a security as defined  
22 in section 2(a)(1) of the Securities Act of  
23 1933 (15 U.S.C. 77b(a)(1));

24 “(viii) any agreement, contract, or  
25 transaction that is—

1 “(I) based on a security; and

2 “(II) entered into directly or  
3 through an underwriter (as defined in  
4 section 2(a)(11) of the Securities Act  
5 of 1933) (15 U.S.C. 77b(a)(11)) by  
6 the issuer of such security for the  
7 purposes of raising capital, unless  
8 such agreement, contract, or trans-  
9 action is entered into to manage a  
10 risk associated with capital raising;

11 “(ix) any foreign exchange swap;

12 “(x) any foreign exchange forward;

13 “(xi) any agreement, contract, or  
14 transaction a counterparty of which is a  
15 Federal Reserve bank or the United States  
16 Government, or an agency of the United  
17 States Government that is expressly  
18 backed by the full faith and credit of the  
19 United States; and

20 “(xii) any security-based swap, other  
21 than a security-based swap as described in  
22 paragraph (38)(C).

23 “(C) RULE OF CONSTRUCTION REGARDING  
24 MASTER AGREEMENTS.—The term ‘swap’ shall  
25 be construed to include a master agreement

1           that provides for an agreement, contract, or  
2           transaction that is a swap pursuant to subpara-  
3           graph (A), together with all supplements to any  
4           such master agreement, without regard to  
5           whether the master agreement contains an  
6           agreement, contract, or transaction that is not  
7           a swap pursuant to subparagraph (A), except  
8           that the master agreement shall be considered  
9           to be a swap only with respect to each agree-  
10          ment, contract, or transaction under the master  
11          agreement that is a swap pursuant to subpara-  
12          graph (A).”;

13          (5) in paragraph (13) (as redesignated by sub-  
14          section (a))—

15                (A) in subparagraph (A)—

16                   (i) in clause (vii), by striking  
17                   “\$25,000,000” and inserting  
18                   “\$50,000,000”; and

19                   (ii) in clause (xi), by striking “total  
20                   assets in an amount” and inserting  
21                   “amounts invested on a discretionary  
22                   basis”; and

23                (B) in paragraph (C), by striking “deter-  
24                mines” and inserting “and the Securities and  
25                Exchange Commission may jointly determine”;



(6) in paragraph (30) (as redesignated by subsection (a)), by—

(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking “and”; and

(C) inserting after subparagraph (D) the following:

“(E) a swap execution facility registered under section 5h;

“(F) a swap repository; and”;

(7) by adding after paragraph (36) (as redesignated by subsection (c)) the following:

“(37) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”;

(8) by adding after paragraph (37) the following:

“(38) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

1 “(i) is based on an index that is a  
2 narrow-based security index, including any  
3 interest therein or based on the value  
4 thereof;

5 “(ii) is based on a single security or  
6 loan, including any interest therein or  
7 based on the value thereof; or

8 “(iii) is based on the occurrence, non-  
9 occurrence, or extent of the occurrence of  
10 an event relating to a single issuer of a se-  
11 curity or the issuers of securities in a nar-  
12 row-based security index, provided that  
13 such event must directly affect the finan-  
14 cial statements, financial condition, or fi-  
15 nancial obligations of the issuer.

16 “(B) EXCLUSION.—The term ‘security-  
17 based swap’ does not include any agreement,  
18 contract, or transaction that meets the defini-  
19 tion of security-based swap only because it ref-  
20 erences or is based upon a government security.

21 “(C) MIXED SWAP.—The term ‘security-  
22 based swap’ includes any agreement, contract,  
23 or transaction that is as described in subpara-  
24 graph (A) and also is based on the value of one  
25 or more interest or other rates, currencies, com-

1       modities, instruments of indebtedness, indices,  
2       quantitative measures, other financial or eco-  
3       nomic interest or property of any kind (other  
4       than a single security or a narrow-based secu-  
5       rity index), or the occurrence, non-occurrence,  
6       or the extent of the occurrence of an event or  
7       contingency associated with a potential finan-  
8       cial, economic, or commercial consequence  
9       (other than an event described in subparagraph  
10      (A)(iii)).

11               “(D) RULE OF CONSTRUCTION REGARDING  
12      MASTER AGREEMENTS.—The term ‘security-  
13      based swap’ shall be construed to include a  
14      master agreement that provides for an agree-  
15      ment, contract, or transaction that is a secu-  
16      rity-based swap pursuant to subparagraph (A),  
17      together with all supplements to any such mas-  
18      ter agreement, without regard to whether the  
19      master agreement contains an agreement, con-  
20      tract, or transaction that is not a security-based  
21      swap pursuant to subparagraph (A), except  
22      that the master agreement shall be considered  
23      to be a security-based swap only with respect to  
24      each agreement, contract, or transaction under

1 the master agreement that is a security-based  
2 swap pursuant to subparagraph (A).”;

3 (9) by adding after paragraph (38) the fol-  
4 lowing:

5 “(39) SWAP DEALER.—

6 “(A) IN GENERAL.—The term ‘swap deal-  
7 er’ means any person engaged in the business  
8 of buying and selling swaps for such person’s  
9 own account, through a broker or otherwise.

10 “(B) EXCEPTION.—The term ‘swap dealer’  
11 does not include a person that buys or sells  
12 swaps for such person’s own account, either in-  
13 dividually or in a fiduciary capacity, but not as  
14 a part of a regular business.”;

15 (10) by adding after paragraph (39) the fol-  
16 lowing:

17 “(40) MAJOR SWAP PARTICIPANT.—

18 “(A) IN GENERAL.—The term ‘major swap  
19 participant’ means any person who is not a  
20 swap dealer and who maintains a substantial  
21 net position in outstanding swaps, excluding po-  
22 sitions held primarily for hedging (including  
23 balance sheet hedging) or risk management  
24 purposes. A person may be designated as a

1 major swap participant for 1 or more individual  
2 types of swaps.

3 “(B) DEFINITION OF ‘SUBSTANTIAL NET  
4 POSITION’.—The Commission and the Securi-  
5 ties and Exchange Commission shall jointly de-  
6 fine by rule or regulation the term ‘substantial  
7 net position’ at a threshold that the regulators  
8 determine prudent for the effective monitoring,  
9 management and oversight of the financial sys-  
10 tem. In the event that the regulators are unable  
11 to agree upon a level within 60 days of the  
12 commencement of such consultations, the Sec-  
13 retary of the Treasury shall make such deter-  
14 mination, which shall be binding on and adopt-  
15 ed by such regulators.”;

16 (11) by adding after paragraph (40) the fol-  
17 lowing:

18 “(41) MAJOR SECURITY-BASED SWAP PARTICI-  
19 PANT.—

20 “(A) IN GENERAL.—The term ‘major secu-  
21 rity-based swap participant’ means any person  
22 who is not a security-based swap dealer and  
23 who maintains a substantial net position in out-  
24 standing security-based swaps, excluding posi-  
25 tions held primarily for hedging (including bal-

1           ance sheet hedging) or risk management pur-  
2           poses. A person may be designated as a major  
3           security-based swap participant for 1 or more  
4           individual types of security-based swaps.

5           “(B) DEFINITION OF ‘SUBSTANTIAL NET  
6           POSITION’.—The Commission and the Securi-  
7           ties and Exchange Commission shall jointly de-  
8           fine by rule or regulation the term ‘substantial  
9           net position’ at a threshold that the regulators  
10          determine prudent for the effective monitoring,  
11          management and oversight of the financial sys-  
12          tem. In the event that the regulators are unable  
13          to agree upon a level within 60 days of the  
14          commencement of such consultations, the Sec-  
15          retary of the Treasury shall make such deter-  
16          mination, which shall be binding on and adopt-  
17          ed by such regulators.”;

18          (12) by adding after paragraph (41) the fol-  
19          lowing:

20          “(42) APPROPRIATE FEDERAL BANKING AGEN-  
21          CY.—The term ‘appropriate Federal banking agency’  
22          has the same meaning as in section 3(q) of the Fed-  
23          eral Deposit Insurance Act (12 U.S.C. 1813(q)).”;

24          (13) by adding after paragraph (42) the fol-  
25          lowing:

1           “(43) PRUDENTIAL REGULATOR.—The term  
2           ‘Prudential Regulator’ means—

3                   “(A) the Board in the case of a swap deal-  
4                   er, major swap participant, security-based swap  
5                   dealer or major security-based swap participant  
6                   that is—

7                           “(i) a State-chartered bank that is a  
8                           member of the Federal Reserve System; or

9                           “(ii) a State-chartered branch or  
10                          agency of a foreign bank;

11                   “(B) the Office of the Comptroller of the  
12                   Currency in the case of a swap dealer, major  
13                   swap participant, security-based swap dealer or  
14                   major security-based swap participant that is—

15                           “(i) a national bank; or

16                           “(ii) a federally chartered branch or  
17                          agency of a foreign bank; and

18                   “(C) the Federal Deposit Insurance Cor-  
19                   poration in the case of a swap dealer, major  
20                   swap participant, security-based swap dealer or  
21                   major security-based swap participant that is a  
22                   State-chartered bank that is not a member of  
23                   the Federal Reserve System.”;

24                   (14) by adding after paragraph (43) the fol-  
25                   lowing:

1 “(44) SECURITY-BASED SWAP DEALER.—

2 “(A) IN GENERAL.—The term ‘security-  
3 based swap dealer’ means any person engaged  
4 in the business of buying and selling security-  
5 based swaps for such person’s own account,  
6 through a broker or otherwise.

7 “(B) EXCEPTION.—The term ‘security-  
8 based swap dealer’ does not include a person  
9 that buys or sells security-based swaps for such  
10 person’s own account, either individually or in  
11 a fiduciary capacity, but not as a part of a reg-  
12 ular business.”;

13 (15) by adding after paragraph (44) the fol-  
14 lowing:

15 “(45) GOVERNMENT SECURITY.—The term  
16 ‘government security’ has the same meaning as in  
17 section 3(a)(42) of the Securities Exchange Act of  
18 1934 (15 U.S.C. 78c(a)(42)).”;

19 (16) by adding after paragraph (45) the fol-  
20 lowing:

21 “(46) FOREIGN EXCHANGE FORWARD.—The  
22 term ‘foreign exchange forward’ means a transaction  
23 that solely involves the exchange of 2 different cur-  
24 rencies on a specific future date at a fixed rate  
25 agreed at the inception of the contract.”;



1           (17) by adding after paragraph (46) the fol-  
2       lowing:

3           “(47) FOREIGN EXCHANGE SWAP.—The term  
4       ‘foreign exchange swap’ means a transaction that  
5       solely involves the exchange of 2 different currencies  
6       on a specific date at a fixed rate agreed at the incep-  
7       tion of the contract, and a reverse exchange of the  
8       same 2 currencies at a date further in the future  
9       and at a fixed rate agreed at the inception of the  
10      contract.”;

11          (18) by adding after paragraph (47) the fol-  
12      lowing:

13          “(48) PERSON ASSOCIATED WITH A SECURITY-  
14      BASED SWAP DEALER OR MAJOR SECURITY-BASED  
15      SWAP PARTICIPANT.—The term ‘person associated  
16      with a security-based swap dealer or major security-  
17      based swap participant’ or ‘associated person of a  
18      security-based swap dealer or major security-based  
19      swap participant’ means any partner, officer, direc-  
20      tor, or branch manager of such security-based swap  
21      dealer or major security-based swap participant (or  
22      any person occupying a similar status or performing  
23      similar functions), any person directly or indirectly  
24      controlling, controlled by, or under common control  
25      with such security-based swap dealer or major secu-

1 rity-based swap participant, or any employee of such  
2 security-based swap dealer or major security-based  
3 swap participant, except that any person associated  
4 with a security-based swap dealer or major security-  
5 based swap participant whose functions are solely  
6 clerical or ministerial shall not be included in the  
7 meaning of such term other than for purposes of  
8 section 15F(e)(2) of the Securities Exchange Act of  
9 1934 (15 U.S.C. 78o–10).”;

10 (19) by adding after paragraph (48) the fol-  
11 lowing:

12 “(49) PERSON ASSOCIATED WITH A SWAP  
13 DEALER OR MAJOR SWAP PARTICIPANT.—The term  
14 ‘person associated with a swap dealer or major swap  
15 participant’ or ‘associated person of a swap dealer or  
16 major swap participant’ means any partner, officer,  
17 director, or branch manager of such swap dealer or  
18 major swap participant (or any person occupying a  
19 similar status or performing similar functions), any  
20 person directly or indirectly controlling, controlled  
21 by, or under common control with such swap dealer  
22 or major swap participant, or any employee of such  
23 swap dealer or major swap participant, except that  
24 any person associated with a swap dealer or major  
25 swap participant whose functions are solely clerical

1 or ministerial shall not be included in the meaning  
2 of such term other than for purposes of section  
3 4s(b)(6).”; and

4 (20) by adding after paragraph (49) the fol-  
5 lowing:

6 “(50) SWAP REPOSITORY.—The term ‘swap re-  
7 pository’ means an entity that collects and maintains  
8 the records of the terms and conditions of swaps or  
9 security-based swaps entered into by third parties.”.

10 (b) JOINT RULEMAKING ON FURTHER DEFINITION  
11 OF TERMS.—

12 (1) IN GENERAL.—The Commodity Futures  
13 Trading Commission and the Securities and Ex-  
14 change Commission shall jointly adopt a rule further  
15 defining the terms “swap”, “security-based swap”,  
16 “swap dealer”, “security-based swap dealer”, “major  
17 swap participant”, “major security-based swap par-  
18 ticipant”, and “eligible contract participant” no  
19 later than 180 days after the effective date of this  
20 Act.

21 (2) PREVENTION OF EVASIONS.—The Com-  
22 modity Futures Trading Commission and the Securi-  
23 ties and Exchange Commission may prescribe rules  
24 defining the term “swap” or “security-based swap”

1 to include transactions that have been structured to  
2 evade this Act.

3 (c) JOINT RULEMAKING UNDER THIS ACT.—

4 (1) UNIFORM RULES.—Rules and regulations  
5 prescribed jointly under this Act by the Commodity  
6 Futures Trading Commission and the Securities and  
7 Exchange Commission shall be uniform.

8 (2) TREASURY DEPARTMENT.—In the event  
9 that the Commodity Futures Trading Commission  
10 and the Securities and Exchange Commission fail to  
11 jointly prescribe uniform rules and regulations under  
12 any provision of this Act in a timely manner, the  
13 Secretary of the Treasury, in consultation with the  
14 Commodity Futures Trading Commission and the  
15 Securities and Exchange Commission, shall prescribe  
16 rules and regulations under such provision. A rule  
17 prescribed by the Secretary of the Treasury shall be  
18 enforced as if prescribed jointly by the Commodity  
19 Futures Trading Commission and the Securities and  
20 Exchange Commission and shall remain in effect  
21 until the Secretary rescinds the rule or until the ef-  
22 fective date of a corresponding rule prescribed joint-  
23 ly by the Commodity Futures Trading Commission  
24 and the Securities and Exchange Commission in ac-  
25 cordance with this section, whichever is later.

1           (3) DEADLINE.—The Secretary of the Treasury  
2       shall adopt rules and regulations under paragraph  
3       (2) within 180 days of the time that the Commodity  
4       Futures Trading Commission and the Securities and  
5       Exchange Commission failed to adopt uniform rules  
6       and regulations.

7           (4) TREATMENT OF SIMILAR PRODUCTS.—In  
8       adopting joint rules and regulations under this Act,  
9       the Commodity Futures Trading Commission and  
10      the Securities and Exchange Commission shall pre-  
11      scribe requirements to treat functionally or economi-  
12      cally similar products similarly.

13          (5) TREATMENT OF DISSIMILAR PRODUCTS.—  
14      Nothing in this Act shall be construed to require the  
15      Commodity Futures Trading Commission and the  
16      Securities and Exchange Commission to adopt joint  
17      rules that treat functionally or economically different  
18      products identically.

19          (6) JOINT INTERPRETATION.—Any interpreta-  
20      tion of, or guidance regarding, a provision of this  
21      Act, shall be effective only if issued jointly by the  
22      Commodity Futures Trading Commission and the  
23      Securities and Exchange Commission if this Act re-  
24      quires the Commodity Futures Trading Commission

1       and the Securities and Exchange Commission to  
2       issue joint regulations to implement the provision.

3       (d) **EXEMPTIONS.**—Section 4(c) of the Commodity  
4       Exchange Act (7 U.S.C. 4(c)) is amended by adding at  
5       the end the following: “The Commission shall not have  
6       the authority to grant exemptions from the swap-related  
7       provisions of the Over-the-Counter Derivatives Markets  
8       Act of 2009, except as expressly authorized under the pro-  
9       visions of that Act.”.

10   **SEC. 112. JURISDICTION.**

11       (a) **EXCLUSIVE JURISDICTION.**—The first sentence  
12       of section 2(a)(1)(A) of the Commodity Exchange Act (7  
13       U.S.C. 2(a)(1)(A)) is amended—

14               (1) by striking “(C) and (D)” and inserting  
15       “(C), (D), and (G)”;

16               (2) by striking “subsections (c) through (i)”  
17       and inserting “subsections (c) and (f)”;

18               (3) by striking “involving contracts of sale” and  
19       inserting “involving swaps or contracts of sale”.

20       (b) **NO LIMITATION.**—Section 2(a)(1) of the Com-  
21       modity Exchange Act (7 U.S.C. 2(a)(1)) is amended by  
22       inserting after subparagraph (F) the following:

23               “(G) Nothing contained in this paragraph  
24       shall supersede or limit the jurisdiction con-  
25       ferred on the Securities and Exchange Commis-

1           sion or other regulatory authority by, or other-  
 2           wise restrict the authority of the Securities and  
 3           Exchange Commission or other regulatory au-  
 4           thority under, the Over-the-Counter Derivatives  
 5           Markets Act of 2009, including with respect to  
 6           a security-based swap as described in section  
 7           1a(38)(C) of this Act.”.

8           (c) ADDITIONS.—Section 2(c)(2)(A) of the Com-  
 9           modity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—  
 10           (1) in clause (i), by striking “or” at the end;  
 11           (2) by redesignating clause (ii) as clause (iii);  
 12           and

13           (3) by inserting after clause (i) the following:  
 14           “(ii) a swap; or”.

15 **SEC. 113. CLEARING.**

16           (a) CLEARING REQUIREMENT.—

17           (1) Sections 2(d), 2(e), 2(g), and 2(h) of the  
 18           Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g),  
 19           and 2(h)) are repealed.

20           (2) Section 2 of the Commodity Exchange Act  
 21           (7 U.S.C. 2) is further amended by inserting after  
 22           subsection (c) the following:

23           “(d) SWAPS.—Nothing in this Act (other than sub-  
 24           sections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b,  
 25           4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5b, 5c, 5h, 6(c), 6(d),

1 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and  
 2 22(a)(4) and such other provisions of this Act as are appli-  
 3 cable by their terms to registered entities and Commission  
 4 registrants) governs or applies to a swap.

5 “(e) LIMITATION ON PARTICIPATION.—It shall be  
 6 unlawful for any person, other than an eligible contract  
 7 participant, to enter into a swap unless the swap is en-  
 8 tered into on or subject to the rules of a board of trade  
 9 designated as a contract market under section 5.”.

10 (3) Section 2 of the Commodity Exchange Act  
 11 (7 U.S.C. 2) is further amended by inserting after  
 12 subsection (i) the following:

13 “(j) CLEARING OF SWAPS.—

14 “(1) CLEARING REQUIREMENT.—The Commis-  
 15 sion shall monitor swap activity and transaction data  
 16 and by rule or regulation identify specific swap con-  
 17 tracts that it determines are required to be cleared  
 18 consistent with the public interest, after taking into  
 19 account the following factors:

20 “(A) the existence of significant out-  
 21 standing notional exposures, trading liquidity  
 22 and adequate pricing data;

23 “(B) the availability of one or more swap  
 24 clearinghouses with the rule framework, capac-  
 25 ity, operational expertise and resources, and



1 credit support infrastructure to clear the con-  
2 tract on terms that are consistent with the ma-  
3 terial terms and trading conventions on which  
4 the contract is then traded;

5 “(C) the impact on the mitigation of sys-  
6 temic risk, taking into account the size of the  
7 market for such contract and the resources of  
8 the swap clearinghouses available to clear the  
9 contract;

10 “(D) the impact on competition; and

11 “(E) the existence of reasonable legal cer-  
12 tainty in the event of the insolvency of the rel-  
13 evant swap clearinghouse or one or more of its  
14 clearing members with regard to the treatment  
15 of customer and swap counterparty positions,  
16 funds, and property.

17 “(2) SCOPE OF CLEARING FUNCTIONS.—The  
18 Commission shall by rule or regulation define the  
19 scope of the clearing functions that are necessary to  
20 satisfy the requirements of paragraph (1).

21 “(3) PREVENTION OF EVASION.—The Commis-  
22 sion and the Securities and Exchange Commission  
23 shall have authority to prescribe rules under this  
24 subsection, or issue interpretations of such rules, as  
25 necessary to prevent evasions of this Act provided

1       that any such rules or interpretations must be issued  
2       jointly to be effective.

3           “(4) REQUIRED REPORTING.—

4               “(A) IN GENERAL.—All swap transactions  
5       that are not accepted for clearing by any de-  
6       rivatives clearing organization shall be reported  
7       to either a swap repository described in section  
8       21 or, if there is no repository that would ac-  
9       cept the swap, to the Commission pursuant to  
10      section 4r within such time period as the Com-  
11      mission may by rule or regulation prescribe.

12           “(B) AUTHORITY OF SWAP DEALER TO RE-  
13      PORT.—Counterparties may agree which  
14      counterparty will report the swap transaction.  
15      In transactions where only 1 counterparty is a  
16      swap dealer, the swap dealer will report the  
17      transaction.

18           “(5) TRANSITION RULES.—Rules adopted by  
19      the Commission under this section shall provide for  
20      the reporting of data, as follows:

21               “(A) Swaps that were entered into before  
22      the date of enactment of the Over-the-Counter  
23      Derivatives Markets Act of 2009 shall be re-  
24      ported to a registered swap repository or the  
25      Commission no later than 180 days after the

1 effective date of the Over-the-Counter Deriva-  
2 tives Markets Act of 2009.

3 “(B) Swaps that were entered into on or  
4 after the date of enactment of the Over-the-  
5 Counter Derivatives Markets Act of 2009 shall  
6 be reported to a registered swap repository or  
7 the Commission no later than the later of—

8 “(i) 90 days after the effective date of  
9 the Over-the-Counter Derivatives Markets  
10 Act of 2009; or

11 “(ii) such other time after entering  
12 into the swap as the Commission may pre-  
13 scribe by rule or regulation.

14 “(6) TRADE EXECUTION.—With respect to  
15 transactions involving swaps subject to the require-  
16 ment of paragraph (1) and where both counterpar-  
17 ties are either swap dealers or major swap partici-  
18 pants, such counterparties must either:

19 “(A) Execute the transaction on a board of  
20 trade designated as a contract market under  
21 section 5 (in which event, such transaction shall  
22 be subject to regulation under this Act as a  
23 transaction in a contract of sale of a commodity  
24 for future delivery or commodity option, as ap-  
25 plicable);

1           “(B) Execute the transaction on a swap  
2           execution facility registered with the Commis-  
3           sion;

4           “(C) Execute the transaction on a foreign  
5           swap execution facility that is subject to regula-  
6           tion as such under the laws of a foreign juris-  
7           diction; or

8           “(D) If the transaction is not executed on  
9           an entity listed in subparagraph (A), (B), or  
10          (C), comply with any recordkeeping and end-of-  
11          day transaction reporting requirements—

12                  “(i) as may be prescribed by the Com-  
13                  mission with respect to commodity swaps  
14                  subject to the requirements of paragraph  
15                  (3); or

16                  “(ii) as may be prescribed by the rel-  
17                  evant foreign regulator in the case of com-  
18                  modity swaps subject to the requirements  
19                  of paragraph (3) entered into by—

20                          “(I) a foreign swap dealer or a  
21                          foreign swap market participant; or

22                          “(II) a U.S. swap dealer or U.S.  
23                          major swap participant that is enter-  
24                          ing into the commodity swap either  
25                          outside of the United States, its terri-

1                   tories and possessions or with a for-  
2                   eign counterparty.

3               “(7) EXCHANGE TRADING.—In adopting rules  
4               and regulations, the Commission shall endeavor to  
5               eliminate unnecessary impediments to the trading on  
6               boards of trade designated as contract markets  
7               under section 5 of contracts, agreements or trans-  
8               actions that would be security-based swaps but for  
9               the trading of such contracts, agreements or trans-  
10              actions on such a designated contract market.

11             “(8) EXCEPTIONS.—The requirements of para-  
12             graph (1) shall not apply to a swap if—

13               “(A) no derivatives clearing organization  
14               registered under this Act will accept the swap  
15               for clearing; or

16               “(B) one of the counterparties to the swap  
17               is not a swap dealer or major swap partici-  
18               pant.”.

19             (b) DERIVATIVES CLEARING ORGANIZATIONS.—

20               (1) Subsections (a) and (b) of section 5b of the  
21               Commodity Exchange Act (7 U.S.C. 7a–1) are  
22               amended to read as follows:

23               “(a) REGISTRATION REQUIREMENT.—It shall be un-  
24               lawful for a derivatives clearing organization, unless reg-  
25               istered with the Commission, directly or indirectly to make

1 use of the mails or any means or instrumentality of inter-  
 2 state commerce to perform the functions of a derivatives  
 3 clearing organization described in section 1a(10) of this  
 4 Act with respect to—

5 “(1) a contract of sale of a commodity for fu-  
 6 ture delivery (or option on such a contract) or option  
 7 on a commodity, in each case unless the contract or  
 8 option is—

9 “(A) excluded from this Act by section  
 10 2(a)(1)(C)(i), 2(c), or 2(f); or

11 “(B) a security futures product cleared by  
 12 a clearing agency registered with the Securities  
 13 and Exchange Commission under the Securities  
 14 Exchange Act of 1934 (15 U.S.C. 78a et seq.);  
 15 or

16 “(2) a swap.

17 “(b) VOLUNTARY REGISTRATION.—

18 “(1) DERIVATIVES CLEARING ORGANIZA-  
 19 TIONS.—A person that clears agreements, contracts,  
 20 or transactions that are not required to be cleared  
 21 under this Act may register with the Commission as  
 22 a derivatives clearing organization.

23 “(2) CLEARING AGENCIES.—A derivatives clear-  
 24 ing organization may clear security-based swaps that  
 25 are required to be cleared by a person who is reg-

1       istered as a clearing agency under the Securities Ex-  
2       change Act of 1934 (15 U.S.C. 78a et seq.).”.

3               (2) Section 5b of the Commodity Exchange Act  
4       (7 U.S.C. 7a–1) is amended by adding at the end  
5       the following:

6       “(g) REQUIRED REGISTRATION FOR BANKS AND  
7       CLEARING AGENCIES.—A person that is required to be  
8       registered as a derivatives clearing organization under this  
9       section shall register with the Commission regardless of  
10      whether the person is also a bank or a clearing agency  
11      registered with the Securities and Exchange Commission  
12      under the Securities Exchange Act of 1934 (15 U.S.C.  
13      78a et seq.).

14      “(h) HARMONIZATION OF RULES.—Not later than  
15      180 days after the effective date of the Over-the-Counter  
16      Derivatives Markets Act of 2009, the Commission and the  
17      Securities and Exchange Commission shall jointly adopt  
18      uniform rules governing persons that are registered as de-  
19      rivatives clearing organizations for swaps under this sub-  
20      section and persons that are registered as clearing agen-  
21      cies for security-based swaps under the Securities Ex-  
22      change Act of 1934 (15 U.S.C. 78a et seq.).

23      “(i) CONSULTATION.—The Commission and the Se-  
24      curities and Exchange Commission shall consult with the

1 appropriate Federal banking agencies prior to adopting  
 2 rules under this section with respect to swaps.

3 “(j) EXEMPTIONS.—The Commission may exempt,  
 4 conditionally or unconditionally, a derivatives clearing or-  
 5 ganization from registration under this section for the  
 6 clearing of swaps if the Commission finds that such de-  
 7 rivatives clearing organization is subject to comparable,  
 8 comprehensive supervision and regulation on a consoli-  
 9 dated basis by the Securities and Exchange Commission,  
 10 a Prudential Regulator or the appropriate governmental  
 11 authorities in the organization’s home country.

12 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

13 “(1) IN GENERAL.—Each derivatives clearing  
 14 organization shall designate an individual to serve as  
 15 a compliance officer.

16 “(2) DUTIES.—The compliance officer—

17 “(A) shall report directly to the board or  
 18 to the senior officer of the derivatives clearing  
 19 organization; and

20 “(B) shall—

21 “(i) review compliance with the core  
 22 principles in section 5b(c)(2);

23 “(ii) in consultation with the board of  
 24 the derivatives clearing organization, a  
 25 body performing a function similar to that



1 of a board, or the senior officer of the de-  
2 rivatives clearing organization, resolve any  
3 conflicts of interest that may arise;

4 “(iii) be responsible for administering  
5 the policies and procedures required to be  
6 established pursuant to this section; and

7 “(iv) ensure compliance with com-  
8 modity laws and the rules and regulations  
9 issued thereunder, including rules pre-  
10 scribed by the Commission pursuant to  
11 this section; and

12 “(C) shall establish procedures for remedi-  
13 ation of noncompliance issues found during  
14 compliance office reviews, lookbacks, internal or  
15 external audit findings, self-reported errors, or  
16 through validated complaints. Procedures will  
17 establish the handling, management response,  
18 remediation, retesting, and closing of non-  
19 compliant issues.

20 “(3) ANNUAL REPORTS REQUIRED.—The com-  
21 pliance officer shall annually prepare and sign a re-  
22 port on the compliance of the derivatives clearing or-  
23 ganization with the commodity laws and its policies  
24 and procedures, including its code of ethics and con-  
25 flict of interest policies, in accordance with rules pre-

1 scribed by the Commission. Such compliance report  
2 shall accompany the financial reports of the deriva-  
3 tives clearing organization that are required to be  
4 furnished to the Commission pursuant to this sec-  
5 tion and shall include a certification that, under pen-  
6 alty of law, the report is accurate and complete.”.

7 (3) Section 5b(c)(2) of the Commodity Ex-  
8 change Act (7 U.S.C. 7a-1(c)(2)) is amended to  
9 read as follows:

10 “(2) CORE PRINCIPLES FOR DERIVATIVES  
11 CLEARING ORGANIZATIONS.—

12 “(A) IN GENERAL.—To be registered and  
13 to maintain registration as a derivatives clear-  
14 ing organization, a derivatives clearing organi-  
15 zation shall comply with the core principles  
16 specified in this paragraph, and any require-  
17 ment that the Commission may impose by rule  
18 or regulation pursuant to section 8a(5). The  
19 Commission may conform the core principles to  
20 reflect evolving United States and international  
21 standards. Except where the Commission deter-  
22 mines otherwise by rule or regulation, a deriva-  
23 tives clearing organization shall have reasonable  
24 discretion in establishing the manner in which  
25 it complies with the core principles.

1 “(B) FINANCIAL RESOURCES.—

2 “(i) The derivatives clearing organiza-  
3 tion shall have adequate financial, oper-  
4 ational, and managerial resources to dis-  
5 charge its responsibilities.

6 “(ii) Financial resources shall at a  
7 minimum exceed the total amount that  
8 would—

9 “(I) enable the derivatives clear-  
10 ing organization to meet its financial  
11 obligations to its members and par-  
12 ticipants notwithstanding a default by  
13 the member or participant creating  
14 the largest financial exposure for that  
15 derivatives clearing organization in ex-  
16 treme but plausible market conditions;  
17 and

18 “(II) enable the derivatives clear-  
19 ing organization to cover its operating  
20 costs for a period of one year, cal-  
21 culated on a rolling basis.

22 “(C) PARTICIPANT AND PRODUCT ELIGI-  
23 BILITY.—

24 “(i) The derivatives clearing organiza-  
25 tion shall establish—

1                   “(I) appropriate admission and  
2                   continuing eligibility standards (in-  
3                   cluding sufficient financial resources  
4                   and operational capacity to meet obli-  
5                   gations arising from participation in  
6                   the derivatives clearing organization)  
7                   for members of and participants in  
8                   the organization; and

9                   “(II) appropriate standards for  
10                  determining eligibility of agreements,  
11                  contracts, or transactions submitted  
12                  to the derivatives clearing organiza-  
13                  tion for clearing.

14                  “(ii) The derivatives clearing organi-  
15                  zation shall have procedures in place to  
16                  verify that participation and membership  
17                  requirements are met on an ongoing basis.

18                  “(iii) The derivatives clearing organi-  
19                  zation’s participation and membership re-  
20                  quirements shall be objective, publicly dis-  
21                  closed, and permit fair and open access.

22                  “(iv) The rules of the derivatives  
23                  clearing organization shall provide for ac-  
24                  ceptance of a standardized swap regardless

1 of the system on which the transaction was  
2 executed.

3 “(D) RISK MANAGEMENT.—

4 “(i) The derivatives clearing organiza-  
5 tion shall have the ability to manage the  
6 risks associated with discharging the re-  
7 sponsibilities of a derivatives clearing orga-  
8 nization through the use of appropriate  
9 tools and procedures.

10 “(ii) The derivatives clearing organi-  
11 zation shall measure its credit exposures to  
12 its members and participants at least once  
13 each business day and shall monitor such  
14 exposures throughout the business day.

15 “(iii) Through margin requirements  
16 and other risk control mechanisms, a de-  
17 rivatives clearing organization shall limit  
18 its exposures to potential losses from de-  
19 faults by its members and participants so  
20 that the operations of the derivatives clear-  
21 ing organization would not be disrupted  
22 and nondefaulting members or participants  
23 would not be exposed to losses that they  
24 cannot anticipate or control.

1 “(iv) Margin required from all mem-  
2 bers and participants shall be sufficient to  
3 cover potential exposures in normal market  
4 conditions.

5 “(v) The models and parameters used  
6 in setting margin requirements shall be  
7 risk-based and reviewed regularly.

8 “(E) SETTLEMENT PROCEDURES.—The  
9 derivatives clearing organization shall—

10 “(i) complete money settlements on a  
11 timely basis, and not less than once each  
12 business day;

13 “(ii) employ money settlement ar-  
14 rangements that eliminate or strictly limit  
15 the derivatives clearing organization’s ex-  
16 posure to settlement bank risks, such as  
17 credit and liquidity risks from the use of  
18 banks to effect money settlements;

19 “(iii) ensure money settlements are  
20 final when effected;

21 “(iv) maintain an accurate record of  
22 the flow of funds associated with each  
23 money settlement;

24 “(v) have the ability to comply with  
25 the terms and conditions of any permitted

1 netting or offset arrangements with other  
2 clearing organizations; and

3 “(vi) for physical settlements, estab-  
4 lish rules that clearly state the derivatives  
5 clearing organization’s obligations with re-  
6 spect to physical deliveries. The risks from  
7 these obligations shall be identified and  
8 managed.

9 “(F) TREATMENT OF FUNDS.—

10 “(i) The derivatives clearing organiza-  
11 tion shall have standards and procedures  
12 designed to protect and ensure the safety  
13 of member and participant funds and as-  
14 sets.

15 “(ii) The derivatives clearing organi-  
16 zation shall hold member and participant  
17 funds and assets in a manner whereby risk  
18 of loss or of delay in the derivatives clear-  
19 ing organization’s access to the assets and  
20 funds is minimized.

21 “(iii) Assets and funds invested by the  
22 derivatives clearing organization shall be  
23 held in instruments with minimal credit,  
24 market, and liquidity risks.

1                   “(G) DEFAULT RULES AND PROCE-  
2 DURES.—

3                   “(i) The derivatives clearing organiza-  
4 tion shall have rules and procedures de-  
5 signed to allow for the efficient, fair, and  
6 safe management of events when members  
7 or participants become insolvent or other-  
8 wise default on their obligations to the de-  
9 rivatives clearing organization.

10                  “(ii) The derivatives clearing organi-  
11 zation’s default procedures shall be clearly  
12 stated, and they shall ensure that the de-  
13 rivatives clearing organization can take  
14 timely action to contain losses and liquidity  
15 pressures and to continue meeting its obli-  
16 gations.

17                  “(iii) The default procedures shall be  
18 publicly available.

19                  “(H) RULE ENFORCEMENT.—The deriva-  
20 tives clearing organization shall—

21                  “(i) maintain adequate arrangements  
22 and resources for the effective monitoring  
23 and enforcement of compliance with rules  
24 of the derivatives clearing organization and  
25 for resolution of disputes; and



1 “(ii) have the authority and ability to  
2 discipline, limit, suspend, or terminate a  
3 member’s or participant’s activities for vio-  
4 lations of rules of the derivatives clearing  
5 organization.

6 “(I) SYSTEM SAFEGUARDS.—The deriva-  
7 tives clearing organization shall—

8 “(i) establish and maintain a program  
9 of risk analysis and oversight to identify  
10 and minimize sources of operational risk  
11 through the development of appropriate  
12 controls and procedures, and the develop-  
13 ment of automated systems, that are reli-  
14 able, secure, and have adequate scalable  
15 capacity;

16 “(ii) establish and maintain emer-  
17 gency procedures, backup facilities, and a  
18 plan for disaster recovery that allows for  
19 the timely recovery and resumption of op-  
20 erations and the fulfillment of the deriva-  
21 tives clearing organization’s responsibilities  
22 and obligations; and

23 “(iii) periodically conduct tests to  
24 verify that backup resources are sufficient  
25 to ensure continued order processing and

1 trade matching, price reporting, market  
2 surveillance, and maintenance of a com-  
3 prehensive and accurate audit trail.

4 “(J) REPORTING.—The derivatives clear-  
5 ing organization shall provide to the Commis-  
6 sion all information necessary for the Commis-  
7 sion to conduct oversight of the derivatives  
8 clearing organization.

9 “(K) RECORDKEEPING.—The derivatives  
10 clearing organization shall maintain records of  
11 all activities related to the business of the de-  
12 rivatives clearing organization as a derivatives  
13 clearing organization in a form and manner ac-  
14 ceptable to the Commission for a period of 5  
15 years.

16 “(L) PUBLIC INFORMATION.—

17 “(i) The derivatives clearing organiza-  
18 tion shall provide market participants with  
19 sufficient information to identify and  
20 evaluate accurately the risks and costs as-  
21 sociated with using the derivatives clearing  
22 organization’s services.

23 “(ii) The derivatives clearing organi-  
24 zation shall make information concerning  
25 the rules and operating procedures gov-

1           erning its clearing and settlement systems  
2           (including default procedures) available to  
3           market participants.

4           “(iii) The derivatives clearing organi-  
5           zation shall disclose publicly and to the  
6           Commission information concerning—

7                   “(I) the terms and conditions of  
8                   contracts, agreements, and trans-  
9                   actions cleared and settled by the de-  
10                  rivatives clearing organization;

11                  “(II) clearing and other fees that  
12                  the derivatives clearing organization  
13                  charges its members and participants;

14                  “(III) the margin-setting method-  
15                  ology and the size and composition of  
16                  the financial resource package of the  
17                  derivatives clearing organization;

18                  “(IV) other information relevant  
19                  to participation in the settlement and  
20                  clearing activities of the derivatives  
21                  clearing organization; and

22                  “(V) daily settlement prices, vol-  
23                  ume, and open interest for all con-  
24                  tracts settled or cleared by it.

1           “(M) INFORMATION-SHARING.—The de-  
2           rivatives clearing organization shall—

3                   “(i) enter into and abide by the terms  
4                   of all appropriate and applicable domestic  
5                   and international information-sharing  
6                   agreements; and

7                   “(ii) use relevant information obtained  
8                   from the agreements in carrying out the  
9                   clearing organization’s risk management  
10                  program.

11           “(N) ANTITRUST CONSIDERATIONS.—Un-  
12           less appropriate to achieve the purposes of this  
13           chapter, the derivatives clearing organization  
14           shall avoid—

15                   “(i) adopting any rule or taking any  
16                   action that results in any unreasonable re-  
17                   straint of trade; or

18                   “(ii) imposing any material anti-  
19                   competitive burden.

20           “(O) GOVERNANCE FITNESS STAND-  
21           ARDS.—

22                   “(i) The derivatives clearing organiza-  
23                   tion shall establish governance arrange-  
24                   ments that are transparent in order to ful-  
25                   fill public interest requirements and to

1 support the objectives of owners and par-  
2 ticipants.

3 “(ii) The derivatives clearing organi-  
4 zation shall establish and enforce appro-  
5 priate fitness standards for directors,  
6 members of any disciplinary committee,  
7 and members of the derivatives clearing or-  
8 ganization, and any other persons with di-  
9 rect access to the settlement or clearing ac-  
10 tivities of the derivatives clearing organiza-  
11 tion, including any parties affiliated with  
12 any of the persons described in this sub-  
13 paragraph.

14 “(P) CONFLICTS OF INTEREST.—The de-  
15 rivatives clearing organization shall establish  
16 and enforce rules to minimize conflicts of inter-  
17 est in the decisionmaking process of the deriva-  
18 tives clearing organization and establish a proc-  
19 ess for resolving such conflicts of interest.

20 “(Q) COMPOSITION OF THE BOARDS.—The  
21 derivatives clearing organization shall ensure  
22 that the composition of the governing board or  
23 committee includes market participants.

24 “(R) LEGAL RISK.—The derivatives clear-  
25 ing organization shall have a well-founded,

1 transparent, and enforceable legal framework  
2 for each aspect of its activities.”.

3 (4) Section 5b of the Commodity Exchange Act  
4 (7 U.S.C. 7a–1) is further amended by adding after  
5 subsection (k), as added by paragraph (2), the fol-  
6 lowing:

7 “(l) REPORTING.—

8 “(1) IN GENERAL.—A derivatives clearing orga-  
9 nization that clears swaps shall provide to the Com-  
10 mission all information determined by the Commis-  
11 sion to be necessary to perform its responsibilities  
12 under this Act. The Commission shall adopt data  
13 collection and maintenance requirements for swaps  
14 cleared by derivatives clearing organizations that are  
15 comparable to the corresponding requirements for  
16 swaps accepted by swap repositories and swaps trad-  
17 ed on swap execution facilities. Subject to section 8,  
18 the Commission shall share such information, upon  
19 request, with the Board, the Securities and Ex-  
20 change Commission, the appropriate Federal bank-  
21 ing agencies, the Financial Services Oversight Coun-  
22 cil, and the Department of Justice or to other per-  
23 sons the Commission deems appropriate, including  
24 foreign financial supervisors (including foreign fu-

1       tures authorities), foreign central banks, and foreign  
2       ministries.

3               “(2) PUBLIC INFORMATION.—A derivatives  
4       clearing organization that clears swaps shall provide  
5       to the Commission, or its designee, such information  
6       as is required by, and in a form and at a frequency  
7       to be determined by, the Commission, in order to  
8       comply with the public reporting requirements con-  
9       tained in section 8(j).”.

10              (5) Section 8(e) of the Commodity Exchange  
11       Act (7 U.S.C. 12(e)) is amended in the last sentence  
12       by adding “central bank and ministries” after “de-  
13       partment” each place it appears.

14       (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING  
15       PRODUCTS.—

16              (1) REPEAL.—Sections 402(d), 404, 407,  
17       408(b), and 408(c)(2) of the Legal Certainty for  
18       Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,  
19       27e, 27f(b), and 27f(c)(2)) are repealed.

20              (2) LEGAL CERTAINTY.—Section 403 of the  
21       Legal Certainty for Bank Products Act of 2000 (7  
22       U.S.C. 27a) is amended to read as follows:

23       **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

24       “**(a) EXCLUSION.**—Except as provided in subsection  
25       (b), no provisions of the Commodity Exchange Act (7

1 U.S.C. 1 et seq.) shall apply to, and the Commodity Fu-  
2 tures Trading Commission and the Securities and Ex-  
3 change Commission shall not exercise regulatory authority  
4 under the Commodity Exchange Act with respect to, an  
5 identified banking product.

6 “(b) EXCEPTION.—An appropriate Federal banking  
7 agency may except an identified banking product from the  
8 exclusion in subsection (a) if the agency determines, in  
9 consultation with the Commodity Futures Trading Com-  
10 mission and the Securities and Exchange Commission,  
11 that the product—

12 “(1) would meet the definition of swap in sec-  
13 tion 1a(35) of the Commodity Exchange Act (7  
14 U.S.C. 1a(35)) or security-based swap in section  
15 1a(38) of the Commodity Exchange Act (7 U.S.C.  
16 1a(38)); and

17 “(2) has become known to the trade as a swap  
18 or security-based swap, or otherwise has been struc-  
19 tured as an identified banking product for the pur-  
20 pose of evading the provisions of the Commodity Ex-  
21 change Act (7 U.S.C. 1 et seq.), the Securities Act  
22 of 1933 (15 U.S.C. 77a et seq.), or the Securities  
23 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.



1 **SEC. 114. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

2 Section 8 of the Commodity Exchange Act (7 U.S.C.  
3 12) is amended by adding after subsection (i) the fol-  
4 lowing:

5 “(j) PUBLIC REPORTING OF AGGREGATE SWAP  
6 DATA.—

7 “(1) IN GENERAL.—The Commission, or a per-  
8 son designated by the Commission pursuant to para-  
9 graph (2), shall make available to the public, in a  
10 manner that does not disclose the business trans-  
11 actions and market positions of any person, aggre-  
12 gate data on swap trading volumes and positions  
13 from the sources set forth in paragraph (3).

14 “(2) DESIGNEE OF THE COMMISSION.—The  
15 Commission may designate a derivatives clearing or-  
16 ganization or a swap repository to carry out the  
17 public reporting described in paragraph (1).

18 “(3) SOURCES OF INFORMATION.—The sources  
19 of the information to be publicly reported as de-  
20 scribed in paragraph (1) are—

21 “(A) derivatives clearing organizations  
22 pursuant to section 5b(k)(2);

23 “(B) swap repositories pursuant to section  
24 21(c)(3); and

25 “(C) reports received by the Commission  
26 pursuant to section 4r.”.

1 **SEC. 115. SWAP REPOSITORIES.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
3 is amended by inserting after section 20 the following:

4 **“SEC. 21. SWAP REPOSITORIES.**

5 **“(a) REGISTRATION REQUIREMENT.—**

6 **“(1) IN GENERAL.—**It shall be unlawful for any  
7 person, unless registered with the Commission, di-  
8 rectly or indirectly to make use of the mails or any  
9 means or instrumentality of interstate commerce to  
10 perform the functions of a swap repository.

11 **“(2) INSPECTION AND EXAMINATION.—**Reg-  
12 istered swap repositories shall be subject to inspec-  
13 tion and examination by any representative of the  
14 Commission.

15 **“(b) STANDARD SETTING.—**

16 **“(1) DATA IDENTIFICATION.—**The Commission  
17 shall prescribe standards that specify the data ele-  
18 ments for each swap that shall be collected and  
19 maintained by each registered swap repository.

20 **“(2) DATA COLLECTION AND MAINTENANCE.—**  
21 The Commission shall prescribe data collection and  
22 data maintenance standards for swap repositories.

23 **“(3) COMPARABILITY.—**The standards pre-  
24 scribed by the Commission under this subsection  
25 shall be comparable to the data standards imposed

1 by the Commission on derivatives clearing organiza-  
2 tions that clear swaps.

3 “(c) DUTIES.—A swap repository shall—

4 “(1) accept data prescribed by the Commission  
5 for each swap under subsection (b);

6 “(2) maintain such data in such form and man-  
7 ner and for such period as may be required by the  
8 Commission;

9 “(3) provide to the Commission, or its designee,  
10 such information as is required by, and in a form  
11 and at a frequency to be determined by, the Com-  
12 mission, in order to comply with the public reporting  
13 requirements contained in section 8(j); and

14 “(4) make available, on a confidential basis  
15 pursuant to section 8, all data obtained by the swap  
16 repository, including individual counterparty trade  
17 and position data, to the Commission, the appro-  
18 priate Federal banking agencies, the Financial Serv-  
19 ices Oversight Council, the Securities and Exchange  
20 Commission, and the Department of Justice or to  
21 other persons the Commission deems appropriate,  
22 including foreign financial supervisors (including for-  
23 eign futures authorities), foreign central banks, and  
24 foreign ministries.

1       “(d) REQUIRED REGISTRATION FOR SECURITY-  
2 BASED SWAP REPOSITORIES.—Any person that is re-  
3 quired to be registered as a swap repository under this  
4 section shall register with the Commission regardless of  
5 whether that person also is registered with the Securities  
6 and Exchange Commission as a security-based swap re-  
7 pository.

8       “(e) HARMONIZATION OF RULES.—Not later than  
9 180 days after the effective date of the Over-the-Counter  
10 Derivatives Markets Act of 2009, the Commission and the  
11 Securities and Exchange Commission shall jointly adopt  
12 uniform rules governing persons that are registered under  
13 this section and persons that are registered as security-  
14 based swap repositories under the Securities Exchange  
15 Act of 1934 (15 U.S.C. 78a et seq.), including uniform  
16 rules that specify the data elements that shall be collected  
17 and maintained by each repository.

18       “(f) EXEMPTIONS.—The Commission may exempt,  
19 conditionally or unconditionally, a swap repository from  
20 the requirements of this section if the Commission finds  
21 that such swap repository is subject to comparable, com-  
22 prehensive supervision and regulation on a consolidated  
23 basis by the Securities and Exchange Commission, a Pru-  
24 dential Regulator or the appropriate governmental au-  
25 thorities in the organization’s home country.”.

1 **SEC. 116. REPORTING AND RECORDKEEPING.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
3 is amended by inserting after section 4q the following:

4 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**  
5 **SWAPS.**

6 “(a) IN GENERAL.—Any person who enters into a  
7 swap and—

8 “(1) did not clear the swap in accordance with  
9 section 2(j)(1); and

10 “(2) did not have data regarding the swap ac-  
11 cepted by a swap repository in accordance with rules  
12 (including time frames) adopted by the Commission  
13 under section 21,  
14 shall meet the requirements in subsection (b).

15 “(b) REPORTS.—Any person described in subsection  
16 (a) shall—

17 “(1) make such reports in such form and man-  
18 ner and for such period as the Commission shall pre-  
19 scribe by rule or regulation regarding the swaps held  
20 by the person; and

21 “(2) keep books and records pertaining to the  
22 swaps held by the person in such form and manner  
23 and for such period as may be required by the Com-  
24 mission, which books and records shall be open to  
25 inspection by any representative of the Commission,  
26 an appropriate Federal banking agency, the Securi-

1       ties and Exchange Commission, the Financial Serv-  
 2       ices Oversight Council, and the Department of Jus-  
 3       tice.

4       “(c) IDENTICAL DATA.—In adopting rules under this  
 5       section, the Commission shall require persons described in  
 6       subsection (a) to report the same or a more comprehensive  
 7       set of data than the Commission requires swap reposi-  
 8       tories to collect under section 21.”.

9       **SEC. 117. REGISTRATION AND REGULATION OF SWAP DEAL-**  
 10       **ERS AND MAJOR SWAP PARTICIPANTS.**

11       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
 12       is amended by inserting after section 4r (as added by sec-  
 13       tion 116) the following:

14       **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**  
 15       **ERS AND MAJOR SWAP PARTICIPANTS.**

16       “(a) REGISTRATION.—

17               “(1) It shall be unlawful for any person to act  
 18       as a swap dealer unless such person is registered as  
 19       a swap dealer with the Commission.

20               “(2) It shall be unlawful for any person to act  
 21       as a major swap participant unless such person shall  
 22       have registered as a major swap participant with the  
 23       Commission.

24       “(b) REQUIREMENTS.—

1           “(1) IN GENERAL.—A person shall register as  
2       a swap dealer or major swap participant by filing a  
3       registration application with the Commission.

4           “(2) CONTENTS.—The application shall be  
5       made in such form and manner as prescribed by the  
6       Commission, giving any information and facts as the  
7       Commission may deem necessary concerning the  
8       business in which the applicant is or will be engaged.  
9       Such person, when registered as a swap dealer or  
10      major swap participant, shall continue to report and  
11      furnish to the Commission such information per-  
12      taining to such person’s business as the Commission  
13      may require.

14          “(3) EXPIRATION.—Each registration shall ex-  
15      pire at such time as the Commission may by rule or  
16      regulation prescribe.

17          “(4) RULES.—Except as provided in sub-  
18      sections (c), (d) and (e), the Commission may pre-  
19      scribe rules applicable to swap dealers and major  
20      swap participants, including rules that limit the ac-  
21      tivities of swap dealers and major swap participants.

22          “(5) TRANSITION.—Rules adopted under this  
23      section shall provide for the registration of swap  
24      dealers and major swap participants no later than

1 one year after the effective date of the Over-the-  
2 Counter Derivatives Markets Act of 2009.

3 “(6) STATUTORY DISQUALIFICATION.—Except  
4 to the extent otherwise specifically provided by rule,  
5 regulation, or order, it shall be unlawful for a swap  
6 dealer or a major swap participant to permit any  
7 person associated with a swap dealer or a major  
8 swap participant who is subject to a statutory dis-  
9 qualification to effect or be involved in effecting  
10 swaps on behalf of such swap dealer or major swap  
11 participant, if such swap dealer or major swap par-  
12 ticipant knew, or in the exercise of reasonable care  
13 should have known, of such statutory disqualifica-  
14 tion.

15 “(c) DUAL REGISTRATION.—

16 “(1) SWAP DEALER.—Any person that is re-  
17 quired to be registered as a swap dealer under this  
18 section shall register with the Commission regardless  
19 of whether that person also is a bank or is registered  
20 with the Securities and Exchange Commission as a  
21 security-based swap dealer.

22 “(2) MAJOR SWAP PARTICIPANT.—Any person  
23 that is required to be registered as a major swap  
24 participant under this section shall register with the  
25 Commission regardless of whether that person also



1 is a bank or is registered with the Securities and  
2 Exchange Commission as a major security-based  
3 swap participant.

4 “(d) JOINT RULES.—

5 “(1) IN GENERAL.—Not later than 180 days  
6 after the effective date of the Over-the-Counter De-  
7 rivatives Markets Act of 2009, the Commission and  
8 the Securities and Exchange Commission shall joint-  
9 ly adopt uniform rules for persons that are reg-  
10 istered as swap dealers or major swap participants  
11 under this section and persons that are registered as  
12 security-based swap dealers or major security-based  
13 swap participants under the Securities Exchange Act  
14 of 1934 (15 U.S.C. 78a et seq.).

15 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
16 MENTS.—The Commission and the Securities and  
17 Exchange Commission shall not prescribe rules im-  
18 posing prudential requirements (including activity  
19 restrictions) on swap dealers, major swap partici-  
20 pants, security-based swap dealers, or major secu-  
21 rity-based swap participants for which there is a  
22 Prudential Regulator. This provision shall not be  
23 construed as limiting the authority of the Commis-  
24 sion and the Securities and Exchange Commission to

1 prescribe appropriate business conduct, reporting,  
2 and recordkeeping requirements to protect investors.

3 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

4 “(1) IN GENERAL.—

5 “(A) BANK SWAP DEALERS AND MAJOR  
6 SWAP PARTICIPANTS.—Each registered swap  
7 dealer and major swap participant for which  
8 there is a Prudential Regulator shall meet such  
9 minimum capital requirements and minimum  
10 initial and variation margin requirements as the  
11 Prudential Regulators shall by rule or regula-  
12 tion jointly prescribe to help ensure the safety  
13 and soundness of the swap dealer or major  
14 swap participant.

15 “(B) NONBANK SWAP DEALERS AND  
16 MAJOR SWAP PARTICIPANTS.—Each registered  
17 swap dealer and major swap participant for  
18 which there is not a Prudential Regulator shall  
19 meet such minimum capital requirements and  
20 minimum initial and variation margin require-  
21 ments as the Commission and the Securities  
22 and Exchange Commission shall by rule or reg-  
23 ulation jointly prescribe to help ensure the safe-  
24 ty and soundness of the swap dealer or major  
25 swap participant.

1 “(2) JOINT RULES.—

2 “(A) BANK SWAP DEALERS AND MAJOR  
3 SWAP PARTICIPANTS.—Within 180 days of the  
4 enactment of the Over-the-Counter Derivatives  
5 Markets Act of 2009, the Prudential Regu-  
6 lators, in consultation with the Commission and  
7 the Securities and Exchange Commission, shall  
8 jointly adopt rules imposing capital and margin  
9 requirements under this subsection for swap  
10 dealers and major swap participants.

11 “(B) NONBANK SWAP DEALERS AND  
12 MAJOR SWAP PARTICIPANTS.—Within 180 days  
13 of the enactment of the Over-the-Counter De-  
14 rivatives Markets Act of 2009, the Commission  
15 and the Securities and Exchange Commission,  
16 in consultation with the Prudential Regulators,  
17 shall jointly adopt rules imposing capital and  
18 margin requirements under this subsection for  
19 swap dealers and major swap participants for  
20 which there is no Prudential Regulator.

21 “(3) CAPITAL.—

22 “(A) BANK SWAP DEALERS AND MAJOR  
23 SWAP PARTICIPANTS.—In setting capital re-  
24 quirements under this subsection, the Pruden-  
25 tial Regulators shall impose:

1           “(i) a capital requirement that is  
2           greater than zero for swaps that are  
3           cleared by a derivatives clearing organiza-  
4           tion; and

5           “(ii) to offset the greater risk to the  
6           swap dealer or major swap participant and  
7           to the financial system arising from the  
8           use of swaps that are not centrally cleared,  
9           higher capital requirements for swaps that  
10          are not cleared by a registered derivatives  
11          clearing organization than for swaps that  
12          are centrally cleared.

13          “(B) NONBANK SWAP DEALERS AND  
14          MAJOR SWAP PARTICIPANTS.—Capital require-  
15          ments set by the Commission and the Securities  
16          and Exchange Commission under this sub-  
17          section shall be as strict as or stricter than the  
18          capital requirements set by the Prudential Reg-  
19          ulators under this subsection.

20          “(C) BANK HOLDING COMPANIES.—Capital  
21          requirements set by the Board for swaps of  
22          bank holding companies and Tier 1 financial  
23          holding companies on a consolidated basis shall  
24          be as strict as or stricter than the capital re-

1           quirements set by the Prudential Regulators  
2           under this subsection.

3           “(D) A futures commission merchant, in-  
4           troducing broker, broker or dealer shall main-  
5           tain sufficient capital to comply with the strict-  
6           er of any applicable capital requirements to  
7           which it is subject.

8           “(4) MARGIN.—

9           “(A) BANK SWAP DEALERS AND MAJOR  
10          SWAP PARTICIPANTS.—The Prudential Regu-  
11          lators shall impose both initial and variation  
12          margin requirements under this subsection on  
13          all swaps that are not cleared by a registered  
14          derivatives clearing organization.

15          “(B) NON-SWAP DEALERS OR MAJOR SWAP  
16          PARTICIPANTS.—The Prudential Regulators  
17          may, but are not required to, impose margin re-  
18          quirements with respect to swaps in which one  
19          of the counterparties is neither a swap dealer,  
20          major swap participant, security-based swap  
21          dealer nor a major security-based swap partici-  
22          pant. Margin requirements for swaps set by the  
23          Commission and the Securities and Exchange  
24          Commission shall provide for the use of non-  
25          cash assets as collateral.

1           “(C) NONBANK SWAP DEALERS AND  
2 MAJOR SWAP PARTICIPANTS.—Margin require-  
3 ments for swaps set by the Commission and the  
4 Securities and Exchange Commission under this  
5 subsection shall be as strict as or stricter than  
6 margin requirements for swaps set by the Pru-  
7 dential Regulators.

8           “(f) REPORTING AND RECORDKEEPING.—

9           “(1) IN GENERAL.—Each registered swap deal-  
10 er and major swap participant—

11           “(A) shall make such reports as are pre-  
12 scribed by the Commission by rule or regulation  
13 regarding the transactions and positions and fi-  
14 nancial condition of such person;

15           “(B) for which—

16           “(i) there is a Prudential Regulator  
17 shall keep books and records of all activi-  
18 ties related to its business as a swap dealer  
19 or major swap participant in such form  
20 and manner and for such period as may be  
21 prescribed by the Commission by rule or  
22 regulation;

23           “(ii) there is no Prudential Regulator  
24 shall keep books and records in such form  
25 and manner and for such period as may be

1           prescribed by the Commission by rule or  
2           regulation;

3           “(C) shall keep such books and records  
4           open to inspection and examination by any rep-  
5           resentative of the Commission; and

6           “(D) shall keep any such books and  
7           records relating to transactions in swaps based  
8           on one or more securities open to inspection  
9           and examination by the Securities and Ex-  
10          change Commission.

11          “(2) RULES.—Within 365 days of the enact-  
12          ment of the Over-the-Counter Derivatives Markets  
13          Act of 2009, the Commission and the Securities and  
14          Exchange Commission, in consultation with the ap-  
15          propriate Federal banking agencies, shall jointly  
16          adopt rules governing reporting and recordkeeping  
17          for swap dealers, major swap participants, security-  
18          based swap dealers, and major security-based swap  
19          participants.

20          “(g) DAILY TRADING RECORDS.—

21          “(1) IN GENERAL.—Each registered swap deal-  
22          er and major swap participant shall maintain daily  
23          trading records of its swaps and all related records  
24          (including related cash or forward transactions) and  
25          recorded communications including but not limited

1 to electronic mail, instant messages, and recordings  
2 of telephone calls, for such period as may be pre-  
3 scribed by the Commission by rule or regulation.

4 “(2) INFORMATION REQUIREMENTS.—The daily  
5 trading records shall include such information as the  
6 Commission shall prescribe by rule or regulation.

7 “(3) CUSTOMER RECORDS.—Each registered  
8 swap dealer and major swap participant shall main-  
9 tain daily trading records for each customer or  
10 counterparty in such manner and form as to be  
11 identifiable with each swap transaction.

12 “(4) AUDIT TRAIL.—Each registered swap deal-  
13 er and major swap participant shall maintain a com-  
14 plete audit trail for conducting comprehensive and  
15 accurate trade reconstructions.

16 “(5) RULES.—Within 365 days of the enact-  
17 ment of the Over-the-Counter Derivatives Markets  
18 Act of 2009, the Commission and the Securities and  
19 Exchange Commission, in consultation with the ap-  
20 propriate Federal banking agencies, shall jointly  
21 adopt rules governing daily trading records for swap  
22 dealers, major swap participants, security-based  
23 swap dealers, and major security-based swap partici-  
24 pants.

25 “(h) BUSINESS CONDUCT STANDARDS.—



1           “(1) IN GENERAL.—Each registered swap deal-  
2       er and major swap participant shall conform with  
3       business conduct standards as may be prescribed by  
4       the Commission by rule or regulation addressing—

5           “(A) fraud, manipulation, and other abu-  
6       sive practices involving swaps (including swaps  
7       that are offered but not entered into);

8           “(B) diligent supervision of its business as  
9       a swap dealer;

10          “(C) adherence to all applicable position  
11       limits; and

12          “(D) such other matters as the Commis-  
13       sion shall determine to be necessary or appro-  
14       priate.

15          “(2) BUSINESS CONDUCT REQUIREMENTS.—  
16       Business conduct requirements adopted by the Com-  
17       mission shall—

18          “(A) establish the standard of care for a  
19       swap dealer or major swap participant to verify  
20       that any counterparty meets the eligibility  
21       standards for an eligible contract participant;

22          “(B) require disclosure by the swap dealer  
23       or major swap participant to any counterparty  
24       to the transaction (other than a swap dealer,  
25       major swap participant, security-based swap

1 dealer or major security-based swap partici-  
2 pant) of—

3 “(i) information about the material  
4 risks and characteristics of the swap;

5 “(ii) the source and amount of any  
6 fees or other material remuneration that  
7 the swap dealer or major swap participant  
8 would directly or indirectly expect to re-  
9 ceive in connection with the swap; and

10 “(iii) any other material incentives or  
11 conflicts of interest that the swap dealer or  
12 major swap participant may have in con-  
13 nection with the swap; and

14 “(C) establish such other standards and  
15 requirements as the Commission may determine  
16 are necessary or appropriate in the public inter-  
17 est, for the protection of investors, or otherwise  
18 in furtherance of the purposes of this Act.

19 “(3) RULES.—The Commission and the Securi-  
20 ties and Exchange Commission, in consultation with  
21 the appropriate Federal banking agencies, shall  
22 jointly prescribe rules under this subsection gov-  
23 erning business conduct standards for swap dealers,  
24 major swap participants, security-based swap deal-  
25 ers, and major security-based swap participants

1 within 365 days of the enactment of the Over-the-  
2 Counter Derivatives Markets Act of 2009.

3 “(i) DOCUMENTATION AND BACK OFFICE STAND-  
4 ARDS.—

5 “(1) IN GENERAL.—Each registered swap deal-  
6 er and major swap participant shall conform with  
7 standards, as may be prescribed by the Commission  
8 by rule or regulation, addressing timely and accurate  
9 confirmation, processing, netting, documentation,  
10 and valuation of all swaps.

11 “(2) RULES.—Within 365 days of the enact-  
12 ment of the Over-the-Counter Derivatives Markets  
13 Act of 2009, the Commission and the Securities and  
14 Exchange Commission, in consultation with the ap-  
15 propriate Federal banking agencies, shall adopt rules  
16 governing documentation and back office standards  
17 for swap dealers, major swap participants, security-  
18 based swap dealers, and major security-based swap  
19 participants.

20 “(j) DEALER RESPONSIBILITIES.—Each registered  
21 swap dealer and major swap participant at all times shall  
22 comply with the following requirements:

23 “(1) MONITORING OF TRADING.—The swap  
24 dealer or major swap participant shall monitor its

1 trading in swaps to prevent violations of applicable  
2 position limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-  
4 TION.—The swap dealer or major swap participant  
5 shall disclose to the Commission and to the Pruden-  
6 tial Regulator for such swap dealer or major swap  
7 participant, as applicable, information concerning—

8 “(A) terms and conditions of its swaps;

9 “(B) swap trading operations, mechanisms,  
10 and practices;

11 “(C) financial integrity protections relating  
12 to swaps; and

13 “(D) other information relevant to its trad-  
14 ing in swaps.

15 “(3) ABILITY TO OBTAIN INFORMATION.—The  
16 swap dealer or major swap participant shall—

17 “(A) establish and enforce internal systems  
18 and procedures to obtain any necessary infor-  
19 mation to perform any of the functions de-  
20 scribed in this section; and

21 “(B) provide the information to the Com-  
22 mission and to the Prudential Regulator for  
23 such swap dealer or major swap participant, as  
24 applicable, upon request.

1           “(4) CONFLICTS OF INTEREST.—The swap  
2 dealer and major swap participant shall implement  
3 conflict-of-interest systems and procedures that—

4           “(A) establish structural and institutional  
5 safeguards to assure that the activities of any  
6 person within the firm relating to research or  
7 analysis of the price or market for any com-  
8 modity are separated by appropriate informa-  
9 tional partitions within the firm from the re-  
10 view, pressure, or oversight of those whose in-  
11 volvement in trading or clearing activities might  
12 potentially bias their judgment or supervision;  
13 and

14           “(B) address such other issues as the  
15 Commission determines appropriate.

16           “(5) ANTITRUST CONSIDERATIONS.—Unless  
17 necessary or appropriate to achieve the purposes of  
18 this Act, the swap dealer or major swap participant  
19 shall avoid—

20           “(A) adopting any processes or taking any  
21 actions that result in any unreasonable re-  
22 straints of trade; or

23           “(B) imposing any material anticompeti-  
24 tive burden on trading.

1       “(k) RULES.—The Commission, the Securities and  
 2 Exchange Commission, and the Prudential Regulators  
 3 shall consult with each other prior to adopting any rules  
 4 under the Over-the-Counter Derivatives Markets Act of  
 5 2009.

6       “(l) RECOGNITION OF COMPARABLE NON-U.S. REGU-  
 7 LATION.—The Commission, in consultation with the Sec-  
 8 retary of the Treasury, the Securities and Exchange Com-  
 9 mission and the Prudential Regulators, shall adopt rules  
 10 exempting from registration and the other requirements  
 11 of the Over-the-Counter Derivatives Market Act of 2009  
 12 foreign financial institutions that the Commission finds  
 13 are subject to comparable regulation in the financial insti-  
 14 tution’s home country.”.

15 **SEC. 118. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
 16 **IN SWAP TRANSACTIONS.**

17       The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
 18 is further amended by inserting after section 4s the fol-  
 19 lowing:

20 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
 21 **IN SWAP TRANSACTIONS.**

22       “(a) CLEARED SWAPS.—A swap dealer, futures com-  
 23 mission merchant, or derivatives clearing organization by  
 24 or through which funds or other property are held as mar-  
 25 gin or collateral to secure the obligations of a counterparty

1 under a swap to be cleared by or through a derivatives  
2 clearing organization shall segregate, maintain, and use  
3 the funds or other property for the benefit of the  
4 counterparty, in accordance with such rules and relations  
5 as the Commission or Prudential Regulator shall pre-  
6 scribe. Any such funds or other property shall be treated  
7 as customer property under this Act.

8 “(b) OVER-THE-COUNTER SWAPS.—At the request of  
9 a swap counterparty who provides funds or other property  
10 to a swap dealer as margin or collateral to secure the obli-  
11 gations of the counterparty under a swap between the  
12 counterparty and the swap dealer that is not submitted  
13 for clearing to a derivatives clearing organization, the  
14 swap dealer shall segregate the funds or other property  
15 for the benefit of the counterparty, and maintain the funds  
16 or other property in an account which is carried by a  
17 third-party custodian and designated as a segregated ac-  
18 count for the counterparty, in accordance with such rules  
19 and regulations as the Commission or Prudential Regu-  
20 lator may prescribe. This subsection shall not be inter-  
21 preted to preclude commercial arrangements regarding the  
22 investment of the segregated funds or other property and  
23 the related allocation of gains and losses resulting from  
24 any such investment.”.

1 **SEC. 119. CONFLICTS OF INTEREST.**

2 Section 4d of the Commodity Exchange Act (7 U.S.C.  
3 6d) is amended by—

4 (1) redesignating subsection (c) as subsection  
5 (d); and

6 (2) inserting after subsection (b) the following:

7 “(c) CONFLICTS OF INTEREST.—The Commission  
8 shall require that futures commission merchants and in-  
9 troducing brokers implement conflict-of-interest systems  
10 and procedures that—

11 “(1) establish structural and institutional safe-  
12 guards to assure that the activities of any person  
13 within the firm relating to research or analysis of  
14 the price or market for any commodity are separated  
15 by appropriate informational partitions within the  
16 firm from the review, pressure, or oversight of those  
17 whose involvement in trading or clearing activities  
18 might potentially bias their judgment or supervision;  
19 and

20 “(2) address such other issues as the Commis-  
21 sion determines appropriate.”.

22 **SEC. 120. SWAP EXECUTION FACILITIES.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
24 is amended by inserting after section 5g the following:

25 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

26 “(a) REGISTRATION.—



1           “(1) IN GENERAL.—No person may operate a  
2           facility for the trading of swaps unless the facility is  
3           registered as a swap execution facility under this  
4           section.

5           “(2) DUAL REGISTRATION.—Any person that is  
6           required to be registered as a swap execution facility  
7           under this section shall register with the Commis-  
8           sion regardless of whether that person also is reg-  
9           istered with the Securities and Exchange Commis-  
10          sion as a swap execution facility.

11          “(b) REQUIREMENTS FOR TRADING.—A swap execu-  
12          tion facility that is registered under subsection (a) may  
13          trade any swap.

14          “(c) TRADING BY CONTRACT MARKETS.—A board of  
15          trade that operates a contract market shall, to the extent  
16          that the board of trade also operates a swap execution fa-  
17          cility and uses the same electronic trade execution system  
18          for trading on the contract market and the swap execution  
19          facility, identify whether the electronic trading is taking  
20          place on the contract market or the swap execution facil-  
21          ity.

22          “(d) CRITERIA FOR REGISTRATION.—

23                 “(1) IN GENERAL.—To be registered as a swap  
24                 execution facility, the facility shall be required to

1 demonstrate to the Commission that it meets the  
2 criteria specified herein.

3 “(2) DETERRENCE OF ABUSES.—The swap exe-  
4 cution facility shall establish and enforce trading  
5 and participation rules that will deter abuses and  
6 have the capacity to detect, investigate, and enforce  
7 those rules, including means to—

8 “(A) obtain information necessary to per-  
9 form the functions required under this section;  
10 or

11 “(B) use means to—

12 “(i) provide market participants with  
13 impartial access to the market; and

14 “(ii) capture information that may be  
15 used in establishing whether rule violations  
16 have occurred.

17 “(3) TRADING PROCEDURES.—The swap execu-  
18 tion facility shall establish and enforce rules or  
19 terms and conditions defining, or specifications de-  
20 tailing, trading procedures to be used in entering  
21 and executing orders traded on or through its facili-  
22 ties.

23 “(4) FINANCIAL INTEGRITY OF TRANS-  
24 ACTIONS.—The swap execution facility shall estab-  
25 lish and enforce rules and procedures for ensuring

1 the financial integrity of swaps entered on or  
2 through its facilities, including the clearance and  
3 settlement of the swaps pursuant to section 2(j)(1).

4 “(e) CORE PRINCIPLES FOR SWAP EXECUTION FA-  
5 CILITIES.—

6 “(1) IN GENERAL.—To maintain its registra-  
7 tion as a swap execution facility, the facility shall  
8 comply with the core principles specified in this sub-  
9 section and any requirement that the Commission  
10 may impose by rule or regulation pursuant to section  
11 8a(5). Except where the Commission determines  
12 otherwise by rule or regulation, the facility shall  
13 have reasonable discretion in establishing the man-  
14 ner in which it complies with these core principles.

15 “(2) COMPLIANCE WITH RULES.—The swap  
16 execution facility shall monitor and enforce compli-  
17 ance with any of the rules of the facility, including  
18 the terms and conditions of the swaps traded on or  
19 through the facility and any limitations on access to  
20 the facility.

21 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-  
22 NIPULATION.—The swap execution facility shall per-  
23 mit trading only in swaps that are not readily sus-  
24 ceptible to manipulation.

1           “(4) MONITORING OF TRADING.—The swap  
2       execution facility shall monitor trading in swaps to  
3       prevent manipulation, price distortion, and disruptions  
4       of the delivery or cash settlement process  
5       through surveillance, compliance, and disciplinary  
6       practices and procedures, including methods for conducting  
7       real-time monitoring of trading and comprehensive  
8       and accurate trade reconstructions.

9           “(5) ABILITY TO OBTAIN INFORMATION.—The  
10      swap execution facility shall—

11           “(A) establish and enforce rules that will  
12           allow the facility to obtain any necessary information  
13           to perform any of the functions described in this subsection;  
14

15           “(B) provide the information to the Commission  
16           upon request; and

17           “(C) have the capacity to carry out such  
18           international information-sharing agreements as  
19           the Commission may require.

20           “(6) EMERGENCY AUTHORITY.—The swap execution  
21      facility shall adopt rules to provide for the exercise  
22      of emergency authority, in consultation or cooperation  
23      with the Commission, where necessary and appropriate,  
24      including the authority to liquidate or

1 transfer open positions in any swap or to suspend or  
2 curtail trading in a swap.

3 “(7) TIMELY PUBLICATION OF TRADING INFOR-  
4 MATION.—The swap execution facility shall make  
5 public timely information on price, trading volume,  
6 and other trading data on swaps to the extent pre-  
7 scribed by the Commission.

8 “(8) RECORDKEEPING AND REPORTING.—The  
9 swap execution facility shall maintain records of all  
10 activities related to the business of the facility, in-  
11 cluding a complete audit trail, in a form and manner  
12 acceptable to the Commission for a period of 5  
13 years, and report to the Commission all information  
14 determined by the Commission to be necessary or  
15 appropriate for the Commission to perform its re-  
16 sponsibilities under this Act in a form and manner  
17 acceptable to the Commission. The Commission shall  
18 adopt data collection and reporting requirements for  
19 swap execution facilities that are comparable to cor-  
20 responding requirements for derivatives clearing or-  
21 ganizations and swap repositories.

22 “(9) ANTITRUST CONSIDERATIONS.—Unless  
23 necessary or appropriate to achieve the purposes of  
24 this Act, the swap execution facility shall avoid—

1           “(A) adopting any rules or taking any ac-  
2           tions that result in any unreasonable restraints  
3           of trade; or

4           “(B) imposing any material anticompeti-  
5           tive burden on trading on the swap execution  
6           facility.

7           “(10) CONFLICTS OF INTEREST.—The swap  
8           execution facility shall—

9           “(A) establish and enforce rules to mini-  
10          mize conflicts of interest in its decisionmaking  
11          process; and

12          “(B) establish a process for resolving the  
13          conflicts of interest.

14          “(11) DESIGNATION OF COMPLIANCE OFFI-  
15          CER.—

16          “(A) IN GENERAL.—Each swap execution  
17          facility shall designate an individual to serve as  
18          a compliance officer.

19          “(B) DUTIES.—The compliance officer  
20          shall—

21                 “(i) report directly to the board or to  
22                 the senior officer of the facility; and

23                 “(ii) shall—

24                         “(I) review compliance with the  
25                         core principles in this subsection;

1                   “(II) in consultation with the  
2                   board of the facility, a body per-  
3                   forming a function similar to that of  
4                   a board, or the senior officer of the  
5                   facility, resolve any conflicts of inter-  
6                   est that may arise;

7                   “(III) be responsible for admin-  
8                   istering the policies and procedures  
9                   required to be established pursuant to  
10                  this section; and

11                  “(IV) ensure compliance with  
12                  commodity laws and the rules and  
13                  regulations issued thereunder, includ-  
14                  ing rules prescribed by the Commis-  
15                  sion pursuant to this section; and

16                  “(iii) establish procedures for remedi-  
17                  ation of non-compliance issues found dur-  
18                  ing compliance office reviews, lookbacks,  
19                  internal or external audit findings, self-re-  
20                  ported errors, or through validated com-  
21                  plaints. Procedures will establish the han-  
22                  dling, management response, remediation,  
23                  re-testing, and closing of non-compliant  
24                  issues.

1                   “(C) ANNUAL REPORTS REQUIRED.—The  
2                   compliance officer shall annually prepare and  
3                   sign a report on the compliance of the facility  
4                   with the commodity laws and its policies and  
5                   procedures, including its code of ethics and con-  
6                   flict of interest policies, in accordance with  
7                   rules prescribed by the Commission. Such com-  
8                   pliance report shall accompany the financial re-  
9                   ports of the facility that are required to be fur-  
10                  nished to the Commission pursuant to this sec-  
11                  tion and shall include a certification that, under  
12                  penalty of law, the report is accurate and com-  
13                  plete.

14               “(f) EXEMPTIONS.—The Commission may exempt,  
15               conditionally or unconditionally, a swap execution facility  
16               from registration under this section if the Commission  
17               finds that such facility is subject to comparable, com-  
18               prehensive supervision and regulation on a consolidated  
19               basis by the Securities and Exchange Commission, a Pru-  
20               dential Regulator or the appropriate governmental au-  
21               thorities in the organization’s home country.

22               “(g) HARMONIZATION OF RULES.—Within 180 days  
23               of the enactment of the Over-the-Counter Derivatives  
24               Markets Act of 2009, the Commission and the Securities  
25               and Exchange Commission shall jointly prescribe rules



1 governing the regulation of swap execution facilities under  
 2 this section and section 3B of the Securities Exchange Act  
 3 of 1934 (15 U.S.C. 78c–2).”.

4 **SEC. 121. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
 5 **TIES AND EXEMPT BOARDS OF TRADE.**

6 Sections 5a and 5d of the Commodity Exchange Act  
 7 (7 U.S.C. 7 and 7a–3) are repealed.

8 **SEC. 122. DESIGNATED CONTRACT MARKETS.**

9 (a) Section 5(d) of the Commodity Exchange Act (7  
 10 U.S.C. 7(d)) is amended by striking paragraph (9) and  
 11 inserting the following:

12 “(9) EXECUTION OF TRANSACTIONS.—

13 “(A) The board of trade shall provide a  
 14 competitive, open, and efficient market and  
 15 mechanism for executing transactions that pro-  
 16 tects the price discovery process of trading in  
 17 the board of trade’s centralized market.

18 “(B) The rules may authorize, for bona  
 19 fide business purposes—

20 “(i) transfer trades or office trades;

21 “(ii) an exchange of—

22 “(I) futures in connection with a  
 23 cash commodity transaction;

24 “(II) futures for cash commod-  
 25 ities; or

1 “(III) futures for swaps; or

2 “(iii) a futures commission merchant,  
3 acting as principal or agent, to enter into  
4 or confirm the execution of a contract for  
5 the purchase or sale of a commodity for fu-  
6 ture delivery if the contract is reported, re-  
7 corded, or cleared in accordance with the  
8 rules of the contract market or a deriva-  
9 tives clearing organization.”.

10 (b) Section 5(d) of the Commodity Exchange Act (7  
11 U.S.C. 7(d)) is amended by adding after paragraph (18)  
12 the following:

13 “(19) FINANCIAL RESOURCES.—The board of  
14 trade shall demonstrate that it has adequate finan-  
15 cial, operational, and managerial resources to dis-  
16 charge the responsibilities of a contract market. For  
17 the board of trade’s financial resources to be consid-  
18 ered adequate, their value shall exceed the total  
19 amount that would enable the contract market to  
20 cover its operating costs for a period of one year,  
21 calculated on a rolling basis.

22 “(20) SYSTEM SAFEGUARDS.—The board of  
23 trade shall—

24 “(A) establish and maintain a program of  
25 risk analysis and oversight to identify and mini-

mize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.”.

**SEC. 123. MARGIN.**

Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph (7)(C), by striking “, excepting the setting of levels of margin”.

**SEC. 124. POSITION LIMITS.**

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting “(1)” after “(a)”;

1           (2) striking “on electronic trading facilities with  
2       respect to a significant price discovery contract” in  
3       the first sentence and inserting “swaps that perform  
4       or affect a significant price discovery function with  
5       respect to regulated markets”;

6           (3) inserting “, including any group or class of  
7       traders,” in the second sentence after “held by any  
8       person”;

9           (4) striking “on an electronic trading facility  
10      with respect to a significant price discovery con-  
11      tract,” in the second sentence and inserting “swaps  
12      that perform or affect a significant price discovery  
13      function with respect to regulated markets,”; and

14          (5) inserting at the end the following:

15          “(2) AGGREGATE POSITION LIMITS.—The Com-  
16      mission may, by rule or regulation, establish limits  
17      (including related hedge exemption provisions) on  
18      the aggregate number or amount of positions in con-  
19      tracts based upon the same underlying commodity  
20      (as defined by the Commission) that may be held by  
21      any person, including any group or class of traders,  
22      for each month across—

23               “(A) contracts listed by designated con-  
24      tract markets;

1           “(B) contracts traded on a foreign board  
2           of trade that provides members or other partici-  
3           pants located in the United States with direct  
4           access to its electronic trading and order  
5           matching system; and

6           “(C) swap contracts that perform or affect  
7           a significant price discovery function with re-  
8           spect to regulated markets.

9           “(3) SIGNIFICANT PRICE DISCOVERY FUNC-  
10          TION.—In making a determination whether a swap  
11          performs or affects a significant price discovery  
12          function with respect to regulated markets, the Com-  
13          mission shall consider, as appropriate:

14               “(A) PRICE LINKAGE.—The extent to  
15               which the swap uses or otherwise relies on a  
16               daily or final settlement price, or other major  
17               price parameter, of another contract traded on  
18               a regulated market based upon the same under-  
19               lying commodity, to value a position, transfer or  
20               convert a position, financially settle a position,  
21               or close out a position.

22               “(B) ARBITRAGE.—The extent to which  
23               the price for the swap is sufficiently related to  
24               the price of another contract traded on a regu-  
25               lated market based upon the same underlying

1 commodity so as to permit market participants  
2 to effectively arbitrage between the markets by  
3 simultaneously maintaining positions or exe-  
4 cuting trades in the swaps on a frequent and  
5 recurring basis.

6 “(C) MATERIAL PRICE REFERENCE.—The  
7 extent to which, on a frequent and recurring  
8 basis, bids, offers, or transactions in a contract  
9 traded on a regulated market are directly based  
10 on, or are determined by referencing, the price  
11 generated by the swap.

12 “(D) MATERIAL LIQUIDITY.—The extent  
13 to which the volume of swaps being traded in  
14 the commodity is sufficient to have a material  
15 effect on another contract traded on a regulated  
16 market.

17 “(E) OTHER MATERIAL FACTORS.—Such  
18 other material factors as the Commission speci-  
19 fies by rule or regulation as relevant to deter-  
20 mine whether a swap serves a significant price  
21 discovery function with respect to a regulated  
22 market.

23 “(4) EXEMPTIONS.—The Commission, by rule,  
24 regulation, or order, may exempt, conditionally or  
25 unconditionally, any person or class of persons, any

1 swap or class of swaps, or any transaction or class  
2 of transactions from any requirement it may estab-  
3 lish under this section with respect to position lim-  
4 its.”.

5 (b) Section 4a(b) of the Commodity Exchange Act  
6 (7 U.S.C. 6a(b)) is amended—

7 (1) in paragraph (1), by striking “or derivatives  
8 transaction execution facility or facilities or elec-  
9 tronic trading facility” and inserting “or swap exe-  
10 cution facility or facilities”; and

11 (2) in paragraph (2), by striking “or derivatives  
12 transaction execution facility or facilities or elec-  
13 tronic trading facility” and inserting “or swap exe-  
14 cution facility”.

15 **SEC. 125. ENHANCED AUTHORITY OVER REGISTERED ENTI-**  
16 **TIES.**

17 (a) Section 5(d)(1) of the Commodity Exchange Act  
18 (7 U.S.C. 7(d)(1)) is amended by striking “The board of  
19 trade shall have” and inserting “Except where the Com-  
20 mission otherwise determines by rule or regulation pursu-  
21 ant to section 8a(5), the board of trade shall have”.

22 (b) Section 5b(c)(2)(A) of the Commodity Exchange  
23 Act (7 U.S.C. 7a–1(c)(2)(A)) is amended by striking “The  
24 applicant shall have” and inserting “Except where the

1 Commission otherwise determines by rule or regulation  
2 pursuant to section 8a(5), the applicant shall have”.

3 (c) Section 5c(a) of the Commodity Exchange Act (7  
4 U.S.C. 7a-2(a)) is amended—

5 (1) in paragraph (1), by striking “5a(d) and  
6 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

7 (2) in paragraph (2), by striking “shall not”  
8 and inserting “may”.

9 (d) Section 5c(c)(1) of the Commodity Exchange Act  
10 (7 U.S.C. 7a-2(c)(1)) is amended by inserting “(A)” after  
11 “IN GENERAL.—” and adding at the end the following:

12 “(B) Unless section 805(e) of the Pay-  
13 ment, Clearing, and Settlement Supervision Act  
14 of 2009 applies, the new contract or instrument  
15 or clearing of the new contract or instrument,  
16 new rule, or rule amendment shall become ef-  
17 fective, pursuant to the registered entity’s cer-  
18 tification, 10 business days after the Commis-  
19 sion’s receipt of the certification (or such short-  
20 er period determined by the Commission by rule  
21 or regulation) unless the Commission notifies  
22 the registered entity within such time that it is  
23 staying the certification because there exist  
24 novel or complex issues that require additional  
25 time to analyze, an inadequate explanation by



1 the submitting registered entity, or a potential  
 2 inconsistency with this Act (including regula-  
 3 tions under this Act).

4 “(C) A notification by the Commission  
 5 pursuant to subparagraph (B) shall stay the  
 6 certification of the new contract or instrument  
 7 or clearing of the new contract or instrument,  
 8 new rule or new amendment for up to an addi-  
 9 tional 90 days from the date of such notifica-  
 10 tion.”.

11 (e) Section 5c(d) of the Commodity Exchange Act (7  
 12 U.S.C. 7a–2(d)) is repealed.

13 **SEC. 126. FOREIGN BOARDS OF TRADE.**

14 (a) \_\_\_\_\_.—Section 4(b) of the Commodity Ex-  
 15 change Act (7 U.S.C. 6(b)) is amended by striking “No  
 16 rule or regulation” and inserting “Except as provided in  
 17 paragraphs (1) and (2), no rule or regulation”.

18 (b) \_\_\_\_\_.—Section 4(b) of the Commodity Ex-  
 19 change Act (7 U.S.C. 6(b)) is further amended by insert-  
 20 ing before “The Commission” the following:

21 “(1) REGISTRATION.—The Commission may  
 22 adopt rules and regulations requiring registration  
 23 with the Commission for a foreign board of trade  
 24 that provides the members of the foreign board of  
 25 trade or other participants located in the United

1 States direct access to the electronic trading and  
2 order matching system of the foreign board of trade,  
3 including rules and regulations prescribing proce-  
4 dures and requirements applicable to the registration  
5 of such foreign boards of trade. For purposes of this  
6 paragraph, ‘direct access’ refers to an explicit grant  
7 of authority by a foreign board of trade to an identi-  
8 fied member or other participant located in the  
9 United States to enter trades directly into the trade  
10 matching system of the foreign board of trade.

11 “(2) LINKED CONTRACTS.—It shall be unlawful  
12 for a foreign board of trade to provide to the mem-  
13 bers of the foreign board of trade or other partici-  
14 pants located in the United States direct access to  
15 the electronic trading and order-matching system of  
16 the foreign board of trade with respect to an agree-  
17 ment, contract, or transaction that settles against  
18 any price (including the daily or final settlement  
19 price) of 1 or more contracts listed for trading on  
20 a registered entity, unless the Commission deter-  
21 mines that—

22 “(A) the foreign board of trade makes pub-  
23 lic daily trading information regarding the  
24 agreement, contract, or transaction that is com-  
25 parable to the daily trading information pub-

1           lished by the registered entity for the 1 or more  
2           contracts against which the agreement, con-  
3           tract, or transaction traded on the foreign  
4           board of trade settles; and

5           “(B) the foreign board of trade (or the for-  
6           eign futures authority that oversees the foreign  
7           board of trade)—

8           “(i) adopts position limits (including  
9           related hedge exemption provisions) for the  
10          agreement, contract, or transaction that  
11          are comparable to the position limits (in-  
12          cluding related hedge exemption provi-  
13          sions) adopted by the registered entity for  
14          the 1 or more contracts against which the  
15          agreement, contract, or transaction traded  
16          on the foreign board of trade settles;

17          “(ii) has the authority to require or  
18          direct market participants to limit, reduce,  
19          or liquidate any position the foreign board  
20          of trade (or the foreign futures authority  
21          that oversees the foreign board of trade)  
22          determines to be necessary to prevent or  
23          reduce the threat of price manipulation,  
24          excessive speculation as described in sec-

tion 4a, price distortion, or disruption of  
delivery or the cash settlement process;

“(iii) agrees to promptly notify the  
Commission, with regard to the agreement,  
contract, or transaction that settles against  
any price (including the daily or final set-  
tlement price) of 1 or more contracts listed  
for trading on a registered entity, of any  
change regarding—

“(I) the information that the for-  
eign board of trade will make publicly  
available;

“(II) the position limits that the  
foreign board of trade or foreign fu-  
tures authority will adopt and enforce;

“(III) the position reductions re-  
quired to prevent manipulation, exces-  
sive speculation as described in sec-  
tion 4a, price distortion, or disruption  
of delivery or the cash settlement  
process; and

“(IV) any other area of interest  
expressed by the Commission to the  
foreign board of trade or foreign fu-  
tures authority;

1 “(iv) provides information to the  
2 Commission regarding large trader posi-  
3 tions in the agreement, contract, or trans-  
4 action that is comparable to the large trad-  
5 er position information collected by the  
6 Commission for the 1 or more contracts  
7 against which the agreement, contract, or  
8 transaction traded on the foreign board of  
9 trade settles; and

10 “(v) provides the Commission with in-  
11 formation necessary to publish reports on  
12 aggregate trader positions for the agree-  
13 ment, contract, or transaction traded on  
14 the foreign board of trade that are com-  
15 parable to such reports on aggregate trad-  
16 er positions for the 1 or more contracts  
17 against which the agreement, contract, or  
18 transaction traded on the foreign board of  
19 trade settles.

20 “(3) EXISTING FOREIGN BOARDS OF TRADE.—

21 Paragraphs (1) and (2) shall not be effective with  
22 respect to any foreign board of trade to which the  
23 Commission has granted direct access permission be-  
24 fore the date of the enactment of this subsection

1       until the date that is 180 days after such date of en-  
2       actment.

3               “(4) PERSONS LOCATED IN THE UNITED  
4       STATES.—”.

5       (c) LIABILITY OF REGISTERED PERSONS TRADING  
6       ON A FOREIGN BOARD OF TRADE.—

7               (1) Section 4(a) of the Commodity Exchange  
8       Act (7. U.S.C. 6(a)) is amended by inserting “or by  
9       subsection (f)” after “Unless exempted by the Com-  
10      mission pursuant to subsection (c)”; and

11              (2) Section 4 of the Commodity Exchange Act  
12      (7 U.S.C. 6) is further amended by adding at the  
13      end the following:

14      “(f) A person registered with the Commission, or ex-  
15      empt from registration by the Commission, under this Act  
16      may not be found to have violated subsection (a) with re-  
17      spect to a transaction in, or in connection with, a contract  
18      of sale of a commodity for future delivery if the person  
19      has reason to believe that the transaction and the contract  
20      is made on or subject to the rules of a foreign board of  
21      trade that has complied with subsections (b)(1) and  
22      (b)(2).”.

23      (d) CONTRACT ENFORCEMENT FOR FOREIGN FU-  
24      TURES CONTRACTS.—Section 22(a) of the Commodity Ex-

1 change Act (7 U.S.C. 25(a)) is amended by adding at the  
2 end the following:

3 “(5) CONTRACT ENFORCEMENT FOR FOREIGN  
4 FUTURES CONTRACTS.—A contract of sale of a com-  
5 modity for future delivery traded or executed on or  
6 through the facilities of a board of trade, exchange,  
7 or market located outside the United States for pur-  
8 poses of section 4(a) shall not be void, voidable, or  
9 unenforceable, and a party to such a contract shall  
10 not be entitled to rescind or recover any payment  
11 made with respect to the contract, based on the fail-  
12 ure of the foreign board of trade to comply with any  
13 provision of this Act.”.

14 **SEC. 127. LEGAL CERTAINTY FOR SWAPS.**

15 Section 22(a)(4) of the Commodity Exchange Act (7  
16 U.S.C. 25(a)(4)) is amended to read as follows:

17 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
18 GIBLE COUNTERPARTIES.—

19 “(A) No hybrid instrument sold to any in-  
20 vestor shall be void, voidable, or unenforceable,  
21 and no party to such hybrid instrument shall be  
22 entitled to rescind, or recover any payment  
23 made with respect to, such a hybrid instrument  
24 under this section or any other provision of  
25 Federal or State law, based solely on the failure

1 of the hybrid instrument to comply with the  
2 terms or conditions of section 2(f) or regula-  
3 tions of the Commission.

4 “(B) No agreement, contract, or trans-  
5 action between eligible contract participants or  
6 persons reasonably believed to be eligible con-  
7 tract participants shall be void, voidable, or un-  
8 enforceable, and no party thereto shall be enti-  
9 tled to rescind, or recover any payment made  
10 with respect to, such agreement, contract, or  
11 transaction under this section or any other pro-  
12 vision of Federal or State law, based solely on  
13 the failure of the agreement, contract, or trans-  
14 action to meet the definition of a swap set forth  
15 in section 1a or to be cleared pursuant to sec-  
16 tion 2(j)(1).”.

17 **SEC. 128. MULTILATERAL CLEARING ORGANIZATIONS.**

18 (a) Section 408(2)(C) of the Federal Deposit Insur-  
19 ance Corporation Improvement Act of 1991 (12 U.S.C.  
20 4421(2)(C)) is amended by striking “section 2(c), 2(d),  
21 2(f), or 2(g) of such Act, or exempted under section 2(h)  
22 or 4(c) of such Act” and inserting “section 2(c) or 2(f)  
23 of such Act”.



1 (b) Section 408 of the Federal Deposit Insurance  
2 Corporation Improvement Act of 1991 (12 U.S.C. 4421)  
3 is further amended by inserting at the end the following:

4 “(4) The term ‘over-the-counter derivative in-  
5 strument’ does not include a swap or a security-  
6 based swap as defined in sections 1a(35) and 1a(38)  
7 of the Commodity Exchange Act (7 U.S.C. 1a(35)  
8 and 1a(38)).”.

9 **SEC. 129. PRIMARY ENFORCEMENT AUTHORITY.**

10 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
11 is amended by adding the following new section after sec-  
12 tion 4b:

13 **“SEC. 4b–1. PRIMARY ENFORCEMENT AUTHORITY.**

14 “(a) CFTC.—Except as provided in subsections (b),  
15 (c), and (d), the Commission shall have primary authority  
16 to enforce the provisions of Subtitle A of the Over-the-  
17 Counter Derivatives Markets Act of 2009 with respect to  
18 any person.

19 “(b) PRUDENTIAL REGULATORS.—The Prudential  
20 Regulators shall have exclusive authority to enforce the  
21 provisions of section 4s(e) and other prudential require-  
22 ments of this Act with respect to banks, and branches or  
23 agencies of foreign banks that are swap dealers or major  
24 swap participants.

1       “(c) REFERRAL.—If the Prudential Regulator for a  
2 swap dealer or major swap participant has cause to believe  
3 that such swap dealer or major swap participant may have  
4 engaged in conduct that constitutes a violation of the non-  
5 prudential requirements of section 4s or rules adopted by  
6 the Commission thereunder, that Prudential Regulator  
7 may recommend in writing to the Commission that the  
8 Commission initiate an enforcement proceeding as author-  
9 ized under this Act. The recommendation shall be accom-  
10 panied by a written explanation of the concerns giving rise  
11 to the recommendation.

12       “(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the  
13 Commission does not initiate an enforcement proceeding  
14 before the end of the 90-day period beginning on the date  
15 on which the Commission receives a recommendation  
16 under subsection (c), the Prudential Regulator may ini-  
17 tiate an enforcement proceeding as permitted under Fed-  
18 eral law.”.

19 **SEC. 130. ENFORCEMENT.**

20       (a) Section 4b(a)(2) of the Commodity Exchange Act  
21 (7 U.S.C. 6b(a)(2)) is amended by striking “or other  
22 agreement, contract, or transaction subject to paragraphs  
23 (1) and (2) of section 5a(g),” and inserting “or swap,”.

24       (b) Section 4b(b) of the Commodity Exchange Act  
25 (7 U.S.C. 6b(b)) is amended by striking “or other agree-

1 ment, contract or transaction subject to paragraphs (1)  
 2 and (2) of section 5a(g),” and inserting “or swap,”.

3 (c) Section 4c(a) of the Commodity Exchange Act (7  
 4 U.S.C. 6c(a)) is amended by inserting “or swap” before  
 5 “if the transaction is used or may be used”.

6 (d) Section 9(a)(2) of the Commodity Exchange Act  
 7 (7 U.S.C. 13(a)(2)) is amended by inserting “or of any  
 8 swap,” before “or to corner”.

9 (e) Section 9(a)(4) of the Commodity Exchange Act  
 10 (7 U.S.C. 13(a)(4)) is amended by inserting “swap reposi-  
 11 tory,” before “or futures association”.

12 (f) Section 9(e)(1) of the Commodity Exchange Act  
 13 (7 U.S.C. 13(e)(1)) is amended by inserting “swap reposi-  
 14 tory,” before “or registered futures association” and by  
 15 inserting “, or swaps,” before “on the basis”.

16 (g) Section 8(b) of the Federal Deposit Insurance Act  
 17 (12 U.S.C. 1818(b)) is amended by adding the following  
 18 new paragraph (6) and renumber existing paragraphs (6)  
 19 through (10) as (7) through (11):

20 “(6) This section shall apply to any swap deal-  
 21 er, major swap participant, security-based swap  
 22 dealer, major security-based swap participant, de-  
 23 rivatives clearing organization, swap repository or  
 24 swap execution facility, whether or not it is an in-  
 25 sured depository institution, for which the Board,

1 the Corporation, or the Office of the Comptroller of  
 2 the Currency is the appropriate Federal banking  
 3 agency or Prudential Regulator for purposes of the  
 4 Over-the-Counter Derivatives Markets Act of  
 5 2009.”.

6 **SEC. 131. RETAIL COMMODITY TRANSACTIONS.**

7 Section 2(c) of the Commodity Exchange Act (7  
 8 U.S.C. 2(c)) is amended—

9 (1) in paragraph (1), by striking “(to the extent  
 10 provided in section 5a(g), 5b, 5d, or 12(e)(2)(B))”  
 11 and inserting “5b, or 12(e)(2)(B))”;

12 (2) in paragraph (2), by inserting after sub-  
 13 paragraph (C) the following:

14 “(D) RETAIL COMMODITY TRANS-  
 15 ACTIONS.—

16 “(i) This subparagraph shall apply to  
 17 any agreement, contract, or transaction in  
 18 any commodity that is—

19 “(I) entered into with, or offered  
 20 to (even if not entered into with), a  
 21 person that is not an eligible contract  
 22 participant or eligible commercial en-  
 23 tity; and

24 “(II) entered into, or offered  
 25 (even if not entered into), on a lever-

1           aged or margined basis, or financed  
2           by the offeror, the counterparty, or a  
3           person acting in concert with the of-  
4           feror or counterparty on a similar  
5           basis.

6           “(ii) Clause (i) shall not apply to—

7                   “(I) an agreement, contract, or  
8                   transaction described in paragraph (1)  
9                   or subparagraphs (A), (B), or (C), in-  
10                  cluding any agreement, contract, or  
11                  transaction specifically excluded from  
12                  subparagraph (A), (B), or (C);

13                   “(II) any security;

14                   “(III) a contract of sale that—

15                           “(aa) results in actual deliv-  
16                           ery within 28 days or such other  
17                           period as the Commission may  
18                           determine by rule or regulation  
19                           based upon the typical commer-  
20                           cial practice in cash or spot mar-  
21                           kets for the commodity involved;  
22                           or

23                           “(bb) creates an enforceable  
24                           obligation to deliver between a  
25                           seller and a buyer that have the

1 ability to deliver and accept deliv-  
2 ery, respectively, in connection  
3 with their line of business;

4 “(IV) an agreement, contract, or  
5 transaction that is listed on a national  
6 securities exchange registered under  
7 section 6(a) of the Securities Ex-  
8 change Act of 1934 (15 U.S.C.  
9 78f(a)); or

10 “(V) an identified banking prod-  
11 uct, as defined in section 402(b) of  
12 the Legal Certainty for Bank Prod-  
13 ucts Act of 2000 (7 U.S.C. 27(b)).

14 “(iii) Sections 4(a), 4(b) and 4b shall  
15 apply to any agreement, contract or trans-  
16 action described in clause (i), that is not  
17 excluded from clause (i) by clause (ii), as  
18 if the agreement, contract, or transaction  
19 were a contract of sale of a commodity for  
20 future delivery.

21 “(iv) This subparagraph shall not be  
22 construed to limit any jurisdiction that the  
23 Commission may otherwise have under any  
24 other provision of this Act over an agree-  
25 ment, contract, or transaction that is a

1 contract of sale of a commodity for future  
2 delivery.

3 “(v) This subparagraph shall not be  
4 construed to limit any jurisdiction that the  
5 Commission or the Securities and Ex-  
6 change Commission may otherwise have  
7 under any other provisions of this Act with  
8 respect to security futures products and  
9 persons effecting transactions in security  
10 futures products.

11 “(vi) For the purposes of this sub-  
12 paragraph, an agricultural producer, pack-  
13 er, or handler shall be considered an eligi-  
14 ble commercial entity for any agreement,  
15 contract, or transaction for a commodity in  
16 connection with its line of business.”.

17 **SEC. 132. LARGE SWAP TRADER REPORTING.**

18 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
19 is amended by adding after section 4t (as added by section  
20 118) the following:

21 **“SEC. 4u. LARGE SWAP TRADER REPORTING.**

22 “(a) It shall be unlawful for any person to enter into  
23 any swap that performs or affects a significant price dis-  
24 covery function with respect to regulated markets if—

1           “(1) such person shall directly or indirectly  
2       enter into such swaps during any one day in an  
3       amount equal to or in excess of such amount as  
4       shall be fixed from time to time by the Commission;  
5       and

6           “(2) such person shall directly or indirectly  
7       have or obtain a position in such swaps equal to or  
8       in excess of such amount as shall be fixed from time  
9       to time by the Commission,

10 unless such person files or causes to be filed with the prop-  
11 erly designated officer of the Commission such reports re-  
12 garding any transactions or positions described in para-  
13 graphs (1) and (2) as the Commission may by rule or reg-  
14 ulation require and unless, in accordance with the rules  
15 and regulations of the Commission, such person shall keep  
16 books and records of all such swaps and any transactions  
17 and positions in any related commodity traded on or sub-  
18 ject to the rules of any board of trade, and of cash or  
19 spot transactions in, inventories of, and purchase and sale  
20 commitments of, such a commodity.

21       “(b) Such books and records shall show complete de-  
22 tails concerning all transactions and positions as the Com-  
23 mission may by rule or regulation prescribe.



1       “(c) Such books and records shall be open at all times  
2 to inspection and examination by any representative of the  
3 Commission.

4       “(d) For the purpose of this subsection, the swaps,  
5 futures and cash or spot transactions and positions of any  
6 person shall include such transactions and positions of any  
7 persons directly or indirectly controlled by such person.

8       “(e) In making a determination whether a swap per-  
9 forms or affects a significant price discovery function with  
10 respect to regulated markets, the Commission shall con-  
11 sider the factors set forth in section 4a(a)(3).”.

12 **SEC. 133. AUTHORITY TO BAN ABUSIVE SWAPS.**

13       The Commodity Futures Trading Commission and  
14 the Securities and Exchange Commission may jointly, by  
15 rule or order, prohibit transactions in any swap (as de-  
16 fined in section 1a(35) of the Commodity Exchange Act)  
17 or security-based swap (as defined in section 1a(38) of  
18 such Act) which the Commodity Futures Trading Com-  
19 mission and the Securities Exchange Commission find  
20 would be detrimental to the stability of a financial market  
21 or of participants in a financial market.

22 **SEC. 134. INTERNATIONAL HARMONIZATION.**

23       In order to promote effective and consistent global  
24 regulation of swaps, the Securities and Exchange Commis-  
25 sion, the Commodity Futures Trading Commission, the

1 Prudential Regulators (as defined in section 1a(43) of the  
2 Commodity Exchange Act), the financial stability regu-  
3 lator, and the Office of Derivatives Supervision shall con-  
4 sult and coordinate with foreign regulatory authorities on  
5 the establishment of consistent international standards  
6 with respect to the regulation of swaps, and may agree  
7 to such information-sharing arrangements as may be  
8 deemed to be necessary or appropriate in the public inter-  
9 est or for the protection of investors and swap counterpar-  
10 ties.

11 **SEC. 135. AUTHORITY TO BAN ACCESS TO THE UNITED**  
12 **STATES FINANCIAL SYSTEM.**

13 The Secretary of the Treasury may prohibit any enti-  
14 ty domiciled in a foreign country that regulates swaps (as  
15 defined in section 1a(35) of the Commodity Exchange Act)  
16 or security-based swaps (as defined in section 1a(38) of  
17 such Act) in a manner which the Secretary of the Treas-  
18 ury finds undermines the stability of a financial market,  
19 from participating in such financial activities in the  
20 United States as the Secretary deems appropriate.

21 **SEC. 136. OTHER AUTHORITY.**

22 Unless otherwise provided by its terms, this title does  
23 not divest any appropriate Federal banking agency, the  
24 Commission, the Securities and Exchange Commission, or

1 other Federal or State agency, of any authority derived  
2 from any other applicable law.

3 **SEC. 137. ANTITRUST.**

4       Nothing in the amendments made by this title shall  
5 be construed to modify, impair, or supersede the operation  
6 of any of the antitrust laws. For purposes of this subtitle,  
7 the term “antitrust laws” has the same meaning given  
8 such term in subsection (a) of the first section of the Clay-  
9 ton Act, except that such term includes section 5 of the  
10 Federal Trade Commission Act to the extent that such  
11 section 5 applies to unfair methods of competition.

12 **SEC. 138. EFFECTIVE DATE.**

13       This subtitle is effective 180 days after the date of  
14 enactment.

15 **Subtitle B—Regulation of Security-**  
16 **Based Swap Markets**

17 **SEC. 151. DEFINITIONS UNDER THE SECURITIES EX-**  
18 **CHANGE ACT OF 1934.**

19       Section 3(a) of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78c(a)) is amended—

21           (1) in paragraph (5)(A) and (B), by inserting  
22       “(but not security-based swaps, other than security-  
23       based swaps with or for persons that are not eligible  
24       contract participants)” after the word “securities”  
25       in each place it appears;

1           (2) in paragraph (13), by adding at the end the  
2           following: “For security-based swaps, such terms in-  
3           clude the execution, termination (prior to its sched-  
4           uled maturity date), assignment, exchange, or simi-  
5           lar transfer or conveyance of, or extinguishing of  
6           rights or obligations under, a security-based swap,  
7           as the context may require.”;

8           (3) in paragraph (14), by adding at the end the  
9           following: “For security-based swaps, such terms in-  
10          clude the execution, termination (prior to its sched-  
11          uled maturity date), assignment, exchange, or simi-  
12          lar transfer or conveyance of, or extinguishing of  
13          rights or obligations under, a security-based swap,  
14          as the context may require.”;

15          (4) in paragraph (39)—

16                (A) by striking “or government securities  
17                dealer” and adding “government securities  
18                dealer, security-based swap dealer or major se-  
19                curity-based swap participant” in its place in  
20                subparagraph (B)(i)(I);

21                (B) by adding “security-based swap dealer,  
22                major security-based swap participant,” after  
23                “government securities dealer,” in subpara-  
24                graph (B)(i)(II);

1 (C) by striking “or government securities  
2 dealer” and adding “government securities  
3 dealer, security-based swap dealer or major se-  
4 curity-based swap participant” in its place in  
5 subparagraph (C); and

6 (D) by adding “security-based swap dealer,  
7 major security-based swap participant,” after  
8 “government securities dealer,” in subpara-  
9 graph (D); and

10 (5) by adding at the end the following:

11 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The  
12 term ‘eligible contract participant’ has the same  
13 meaning as in section 1a(13) of the Commodity Ex-  
14 change Act (7 U.S.C. 1a(13)).

15 “(66) MAJOR SWAP PARTICIPANT.—The term  
16 ‘major swap participant’ has the same meaning as in  
17 section 1a(40) of the Commodity Exchange Act (7  
18 U.S.C. 1a(40)).

19 “(67) MAJOR SECURITY-BASED SWAP PARTICI-  
20 PANT.—The term ‘major security-based swap partic-  
21 ipant’ has the same meaning as in section 1a(41) of  
22 the Commodity Exchange Act (7 U.S.C. 1a(41)).

23 “(68) SECURITY-BASED SWAP.—The term ‘se-  
24 curity-based swap’ has the same meaning as in sec-

1       tion 1a(38) of the Commodity Exchange Act (7  
2       U.S.C. 1a(38)).

3               “(69) SWAP.—The term ‘swap’ has the same  
4       meaning as in section 1a(35) of the Commodity Ex-  
5       change Act (7 U.S.C. 1a(35)).

6               “(70) PERSON ASSOCIATED WITH A SECURITY-  
7       BASED SWAP DEALER OR MAJOR SECURITY-BASED  
8       SWAP PARTICIPANT.—The term ‘person associated  
9       with a security-based swap dealer or major security-  
10      based swap participant’ or ‘associated person of a  
11      security-based swap dealer or major security-based  
12      swap participant’ has the same meaning as in sec-  
13      tion 1a(48) of the Commodity Exchange Act (7  
14      U.S.C. 1a(48)).

15              “(71) SECURITY-BASED SWAP DEALER.—The  
16      term ‘security-based swap dealer’ has the same  
17      meaning as in section 1a(44) of the Commodity Ex-  
18      change Act (7 U.S.C. 1a(44)).

19              “(72) APPROPRIATE FEDERAL BANKING AGEN-  
20      CY.—The term ‘appropriate Federal banking agency’  
21      has the same meaning as in section 3(q) of the Fed-  
22      eral Deposit Insurance Act (12 U.S.C. 1813(q)).

23              “(73) BOARD.—The term ‘Board’ means the  
24      Board of Governors of the Federal Reserve System.

1           “(74) PRUDENTIAL REGULATOR.—The term  
2           ‘Prudential Regulator’ has the same meaning as in  
3           section 1a(43) of the Commodity Exchange Act (7  
4           U.S.C. 1a(43)).

5           “(75) SWAP DEALER.—The term ‘swap dealer’  
6           has the same meaning as in section 1a(39) of the  
7           Commodity Exchange Act (7 U.S.C. 1a(39)).

8           “(76) SECURITY-BASED SWAP AGREEMENT.—

9                   “(A) IN GENERAL.—For purposes of sec-  
10           tions 10, 16, 20, and 21A of this Act, and sec-  
11           tion 17 of the Securities Act of 1933 (15  
12           U.S.C. 77q), the term ‘security-based swap  
13           agreement’ means a swap agreement as defined  
14           in section 206A of the Gramm-Leach-Bliley Act  
15           (15 U.S.C. 78c note) of which a material term  
16           is based on the price, yield, value, or volatility  
17           of any security or any group or index of securi-  
18           ties, or any interest therein.

19                   “(B) EXCLUSIONS.—The term ‘security-  
20           based swap agreement’ does not include any se-  
21           curity-based swap.”.

22   **SEC. 152. REPEAL OF PROHIBITION ON REGULATION OF SE-**  
23                   **CURITY-BASED SWAPS.**

24           (a) REPEAL OF LAW.—Section 206B of the Gramm-  
25   Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

1 (b) CONFORMING AMENDMENTS TO THE SECURITIES  
2 ACT OF 1933.—

3 (1) Section 2A(b) is amended by striking “(as  
4 defined in section 206B of the Gramm-Leach-Bliley  
5 Act)” each place that such term appears.

6 (2) Section 17 of the Securities Act of 1933 (15  
7 U.S.C. 77q) is amended—

8 (A) in subsection (a)—

9 (i) by inserting “(including security-  
10 based swaps)” after “securities”; and

11 (ii) by striking “206B of the Gramm-  
12 Leach-Bliley Act” and inserting “3(a)(76)  
13 of the Securities Exchange Act of 1934”;  
14 and

15 (B) in subsection (d), by striking “206B of  
16 the Gramm-Leach-Bliley Act” and inserting  
17 “3(a)(76) of the Securities Exchange Act of  
18 1934”.

19 (c) CONFORMING AMENDMENTS TO THE SECURITIES  
20 EXCHANGE ACT OF 1934.—The Securities Exchange Act  
21 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

22 (1) Section 3A (15 U.S.C. 78c–1) is amended  
23 by striking “(as defined in section 206B of the  
24 Gramm-Leach-Bliley Act)” each place that the term  
25 appears.



1           (2) Section 9(a) (15 U.S.C. 78i(a)) is amended  
2       by striking paragraphs (2) through (5) and insert-  
3       ing:

4           “(2) To effect, alone or with one or more other  
5       persons, a series of transactions in any security reg-  
6       istered on a national securities exchange or in con-  
7       nection with any security-based swap with respect to  
8       such security creating actual or apparent active  
9       trading in such security, or raising or depressing the  
10      price of such security, for the purpose of inducing  
11      the purchase or sale of such security by others.

12          “(3) If a dealer, broker, security-based swap  
13      dealer, major security-based swap participant or  
14      other person selling or offering for sale or pur-  
15      chasing or offering to purchase the security to in-  
16      duce the purchase or sale of any security registered  
17      on a national securities exchange or any security-  
18      based swap with respect to such security by the cir-  
19      culation or dissemination in the ordinary course of  
20      business of information to the effect that the price  
21      of any such security will or is likely to rise or fall  
22      because of market operations of any one or more  
23      persons conducted for the purpose of raising or de-  
24      pressing the price of such security.

1           “(4) If a dealer, broker, security-based swap  
2       dealer, major security-based swap participant or  
3       other person selling or offering for sale or pur-  
4       chasing or offering to purchase the security, to  
5       make, regarding any security registered on a na-  
6       tional securities exchange or any security-based swap  
7       with respect to such security, for the purpose of in-  
8       ducing the purchase or sale of such security or such  
9       security-based swap, any statement which was at the  
10      time and in the light of the circumstances under  
11      which it was made, false or misleading with respect  
12      to any material fact, and which he knew or had rea-  
13      sonable ground to believe was so false or misleading.

14           “(5) For a consideration, received directly or  
15      indirectly from a dealer, broker, security-based swap  
16      dealer, major security-based swap participant or  
17      other person selling or offering for sale or pur-  
18      chasing or offering to purchase the security, to in-  
19      duce the purchase of any security registered on a  
20      national securities exchange or any security-based  
21      swap with respect to such security by the circulation  
22      or dissemination of information to the effect that the  
23      price of any such security will or is likely to rise or  
24      fall because of the market operations of any one or

1 more persons conducted for the purpose of raising or  
2 depressing the price of such security.”.

3 (3) Section 10 (15 U.S.C. 78j) is amended by  
4 striking “(as defined in section 206B of the Gramm-  
5 Leach-Bliley Act)” each place that the term appears.

6 (4) Section 15(c)(1) is amended—

7 (A) in subparagraph (A), by striking “, or  
8 any security-based swap agreement (as defined  
9 in section 206B of the Gramm-Leach-Bliley  
10 Act),”; and

11 (B) in subparagraphs (B) and (C), by  
12 striking “agreement (as defined in section 206B  
13 of the Gramm-Leach-Bliley Act)” in each place  
14 that the term appears.

15 (5) Section 15(i) (15 U.S.C. 78o(i), as added  
16 by section 303(f) of the Commodity Futures Mod-  
17 ernization Act of 2000 (Public Law 106–554; 114  
18 Stat. 2763A–455) is amended by striking “(as de-  
19 fined in section 206B of the Gramm-Leach-Bliley  
20 Act)”.

21 (6) Section 16 (15 U.S.C. 78p) is amended—

22 (A) in subsection (a)(2)(C), by striking  
23 “(as defined in section 206(b) of the Gramm-  
24 Leach-Bliley Act)”;

1 (B) in subsection (b), by striking “(as de-  
2 fined in section 206B of the Gramm-Leach-Bli-  
3 ley Act)” in each place that the term appears;  
4 and

5 (C) in subsection (g), by striking “(as de-  
6 fined in section 206B of the Gramm-Leach-Bli-  
7 ley Act)”;

8 (7) Section 20 (15 U.S.C. 78t) is amended—

9 (A) in subsection (d), by striking “(as de-  
10 fined in section 206B of the Gramm-Leach-Bli-  
11 ley Act)”;

12 (B) in subsection (f), by striking “(as de-  
13 fined in section 206B of the Gramm-Leach-Bli-  
14 ley Act)”;

15 (8) Section 21A (15 U.S.C. 78u–1) is amend-  
16 ed—

17 (A) in subsection (a)(1), by striking “(as  
18 defined in section 206B of the Gramm-Leach-  
19 Bliley Act)”;

20 (B) in subsection (g), by striking “(as de-  
21 fined in section 206B of the Gramm-Leach-Bli-  
22 ley Act)”.

1 **SEC. 153. AMENDMENTS TO THE SECURITIES EXCHANGE**  
2 **ACT OF 1934.**

3 (a) CLEARING FOR SECURITY-BASED SWAPS.—The  
4 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)  
5 is amended by adding the following section after section  
6 3A:

7 **“SEC. 3B. CLEARING OF SECURITY-BASED SWAPS.**

8 **“(a) CLEARING REQUIREMENT.—**

9 **“(1) CLEARING OF SECURITY-BASED SWAPS.—**

10 **“(A) CLEARING REQUIREMENT.—**The  
11 Commission shall monitor security-based swap  
12 activity and transaction data and by rule or  
13 regulation identify specific security-based swap  
14 contracts that it determines are required to be  
15 cleared consistent with the public interest, after  
16 taking into account—

17 **“(i)** the existence of significant out-  
18 standing notional exposures, trading liquid-  
19 ity and adequate pricing data;

20 **“(ii)** the availability of one or more  
21 swap clearinghouses with the rule frame-  
22 work, capacity, operational expertise and  
23 resources, and credit support infrastruc-  
24 ture to clear the contract on terms that are  
25 consistent with the material terms and

1 trading conventions on which the contract  
2 is then traded;

3 “(iii) the impact on the mitigation of  
4 systemic risk, taking into account the size  
5 of the market for such contract and the re-  
6 sources of the swap clearinghouses avail-  
7 able to clear the contract;

8 “(iv) the impact on competition; and

9 “(v) the existence of reasonable legal  
10 certainty in the event of the insolvency of  
11 the relevant swap clearinghouse or one or  
12 more of its clearing members with regard  
13 to the treatment of customer and swap  
14 counterparty positions, funds, and prop-  
15 erty.

16 “(B) SCOPE OF CLEARING FUNCTIONS.—

17 The Commission shall by rule or regulation de-  
18 fine the scope of the clearing functions that are  
19 necessary to satisfy the requirements of sub-  
20 paragraph (A).

21 “(2) PREVENTION OF EVASION.—The Commis-

22 sion and the Commodities Futures Trading Commis-  
23 sion shall have authority to prescribe rules under  
24 this section, or issue interpretations of such rules, as  
25 necessary to prevent evasions of this Act. Any such

1 rules or interpretations of rules shall be prescribed  
2 and issued jointly by both Commissions.

3 “(3) REQUIRED REPORTING.—

4 “(A) IN GENERAL.—Any security-based  
5 swap that is not accepted for clearing by any  
6 clearing agency shall be reported to either a se-  
7 curity-based swap repository described in sec-  
8 tion 13(n) or, if there is no repository that  
9 would accept the security-based swap, to the  
10 Commission pursuant to section 13A within  
11 such time period as the Commission may by  
12 rule prescribe.

13 “(B) AUTHORITY OF SWAP DEALER TO RE-  
14 PORT.—Counterparties to a security-based swap  
15 may agree as to which counterparty will report  
16 such swap as required by subparagraph (A). In  
17 any security-based swap where only one  
18 counterparty is a swap dealer, the swap dealer  
19 shall report the swap.

20 “(4) TRANSITION RULES.—Rules adopted by  
21 the Commission under this section shall provide for  
22 the reporting of data, as follows:

23 “(A) Security-based swaps that were en-  
24 tered into before the date of enactment of the  
25 Over-the-Counter Derivatives Markets Act of

1           2009 shall be reported to a registered security-  
2           based swap repository or the Commission no  
3           later than 180 days after the effective date of  
4           such Act.

5           “(B) Security-based swaps that were en-  
6           tered into on or after the date of enactment of  
7           the Over-the-Counter Derivatives Markets Act  
8           of 2009 shall be reported to a registered secu-  
9           rity-based swap repository or the Commission  
10          no later than the later of—

11                   “(i) 90 days after the effective date of  
12                   such Act; or

13                   “(ii) such other time after entering  
14                   into the swap as the Commission may pre-  
15                   scribe by rule or regulation.

16          “(b) CONSULTATION.—The Commission and the  
17          Commodity Futures Trading Commission shall consult  
18          with the appropriate Federal banking agencies and each  
19          other prior to adopting rules under this section.”.

20          (b) CLEARING AGENCY REQUIREMENTS.—Section  
21          17A of the Securities Exchange Act of 1934 (15 U.S.C.  
22          78q) is amended by adding at the end the following new  
23          subsections:

24                   “(g) REGISTRATION REQUIREMENT.—It shall be un-  
25          lawful for a clearing agency, unless registered with the



1 Commission, directly or indirectly to make use of the mails  
2 or any means or instrumentality of interstate commerce  
3 to perform the functions of a clearing agency with respect  
4 to a swap.

5 “(h) VOLUNTARY REGISTRATION.—

6 “(1) CLEARING AGENCIES.—A person that  
7 clears agreements, contracts, or transactions that  
8 are not required to be cleared under this Act may  
9 register with the Commission as a clearing agency.

10 “(2) DERIVATIVES CLEARING ORGANIZA-  
11 TIONS.—A clearing agency may clear swaps that are  
12 required to be cleared by a person who is registered  
13 as a derivatives clearing organization under the  
14 Commodity Exchange Act (7 U.S.C. 1, et seq.).

15 “(i) REQUIRED REGISTRATION FOR BANKS AND  
16 CLEARING AGENCIES.—A person that is required to be  
17 registered as a clearing agency under this section shall  
18 register with the Commission regardless of whether the  
19 person is also a bank or a derivatives clearing organization  
20 registered with the Commodity Futures Trading Commis-  
21 sion under the Commodity Exchange Act (7 U.S.C. 1, et  
22 seq.).

23 “(j) REPORTING.—

24 “(1) IN GENERAL.—A clearing agency that  
25 clears security-based swaps shall provide to the

1 Commission all information determined by the Com-  
2 mission to be necessary to perform its responsibil-  
3 ities under this Act. The Commission shall adopt  
4 data collection and maintenance requirements for se-  
5 curity-based swaps cleared by clearing agencies that  
6 are comparable to the corresponding requirements  
7 for security-based swaps accepted by security-based  
8 swap repositories and security-based swaps traded  
9 on alternative swap execution facilities. The Com-  
10 mission shall share such information, upon request,  
11 with the Board, the Commodity Futures Trading  
12 Commission, the appropriate Federal banking agen-  
13 cies, the Financial Services Oversight Council, and  
14 the Department of Justice or to other persons the  
15 Commission deems appropriate, including foreign fi-  
16 nancial supervisors (including foreign futures au-  
17 thorities), foreign central banks, and foreign min-  
18 istries.

19 “(2) PUBLIC INFORMATION.—A clearing agency  
20 that clears security-based swaps shall provide to the  
21 Commission, or its designee, such information as is  
22 required by, and in a form and at a frequency to be  
23 determined by, the Commission, in order to comply  
24 with the public reporting requirements contained in  
25 section 13.

1 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

2 “(1) IN GENERAL.—Each clearing agency that  
3 clears security-based swaps shall designate an indi-  
4 vidual to serve as a compliance officer.

5 “(2) DUTIES.—The compliance officer shall—

6 “(A) report directly to the board or to the  
7 senior officer of the clearing agency;

8 “(B) in consultation with the board of the  
9 clearing agency, a body performing a function  
10 similar to that of a board, or the senior officer  
11 of the clearing agency, resolve any conflicts of  
12 interest that may arise;

13 “(C) be responsible for administering the  
14 policies and procedures required to be estab-  
15 lished pursuant to this section;

16 “(D) ensure compliance with securities  
17 laws and the rules and regulations issued there-  
18 under, including rules prescribed by the Com-  
19 mission pursuant to this section; and

20 “(E) establish procedures for remediation  
21 of noncompliance issues found during compli-  
22 ance office reviews, lookbacks, internal or exter-  
23 nal audit findings, self-reported errors, or  
24 through validated complaints which will estab-  
25 lish the handling, management response, reme-

1 diation, retesting, and closing of noncompliance  
2 issues.

3 “(3) ANNUAL REPORTS REQUIRED.—The com-  
4 pliance officer shall annually prepare and sign a re-  
5 port on the compliance of the clearing agency with  
6 the securities laws and its policies and procedures,  
7 including its code of ethics and conflict of interest  
8 policies, in accordance with rules prescribed by the  
9 Commission. Such compliance report shall accom-  
10 pany the financial reports of the clearing agency  
11 that are required to be furnished to the Commission  
12 pursuant to this section and shall include a certifi-  
13 cation that, under penalty of law, the report is accu-  
14 rate and complete.

15 “(1) CORE PRINCIPLES FOR CLEARING AGENCIES.—

16 “(1) IN GENERAL.—To be registered and to  
17 maintain registration as a clearing agency, a clear-  
18 ing agency shall comply with the core principles  
19 specified in this subsection. The Commission may  
20 conform the core principles to reflect evolving United  
21 States and international standards. Except where  
22 the Commission determines otherwise by rule or reg-  
23 ulation, a clearing agency shall have reasonable dis-  
24 cretion in establishing the manner in which it com-  
25 plies with the core principles.

1 “(2) FINANCIAL RESOURCES.—

2 “(A) The clearing agency shall have ade-  
3 quate financial, operational, and managerial re-  
4 sources to discharge its responsibilities.

5 “(B) Financial resources shall at a min-  
6 imum exceed the total amount that would—

7 “(i) enable the clearing agency to  
8 meet its financial obligations to its mem-  
9 bers and participants notwithstanding a  
10 default by the member or participant cre-  
11 ating the largest financial exposure for  
12 that clearing agency in extreme but plau-  
13 sible market conditions; and

14 “(ii) enable the clearing agency to  
15 cover its operating costs for a period of  
16 one year, calculated on a rolling basis.

17 “(3) PARTICIPANT AND PRODUCT ELIGI-  
18 BILITY.—

19 “(A) The clearing agency shall establish—

20 “(i) appropriate admission and con-  
21 tinuing eligibility standards (including suf-  
22 ficient financial resources and operational  
23 capacity to meet obligations arising from  
24 participation in the clearing agency) for

1 members of and participants in the organi-  
2 zation; and

3 “(ii) appropriate standards for deter-  
4 mining eligibility of agreements, contracts,  
5 or transactions submitted to the clearing  
6 agency for clearing.

7 “(B) The clearing agency shall have proce-  
8 dures in place to verify that participation and  
9 membership requirements are met on an ongo-  
10 ing basis.

11 “(C) The clearing agency’s participation  
12 and membership requirements shall be objec-  
13 tive, publicly disclosed, and permit fair and  
14 open access.

15 “(D) The rules of the clearing agency shall  
16 provide for acceptance of a standardized secu-  
17 rity-based swap regardless of the system on  
18 which the transaction was executed.

19 “(4) RISK MANAGEMENT.—

20 “(A) The clearing agency shall have the  
21 ability to manage the risks associated with dis-  
22 charging the responsibilities of a clearing agen-  
23 cy through the use of appropriate tools and pro-  
24 cedures.

1           “(B) The clearing agency shall measure its  
2           credit exposures to its members and partici-  
3           pants at least once each business day and shall  
4           monitor such exposures throughout the business  
5           day.

6           “(C) Through margin requirements and  
7           other risk control mechanisms, a clearing agen-  
8           cy shall limit its exposures to potential losses  
9           from defaults by its members and participants  
10          so that the operations of the clearing agency  
11          would not be disrupted and nondefaulting mem-  
12          bers or participants would not be exposed to  
13          losses that they cannot anticipate or control.

14          “(D) Margin required from all members  
15          and participants shall be sufficient to cover po-  
16          tential exposures in normal market conditions.

17          “(E) The models and parameters used in  
18          setting margin requirements shall be risk-based  
19          and reviewed regularly.

20          “(5) SETTLEMENT PROCEDURES.—The clearing  
21          agency shall—

22               “(A) complete money settlements on a  
23               timely basis, and not less than once each busi-  
24               ness day;

1           “(B) employ money settlement arrange-  
2           ments that eliminate or strictly limit the clear-  
3           ing agency’s exposure to settlement bank risks,  
4           such as credit and liquidity risks from the use  
5           of banks to effect money settlements;

6           “(C) ensure money settlements are final  
7           when effected;

8           “(D) maintain an accurate record of the  
9           flow of funds associated with each money settle-  
10          ment;

11          “(E) have the ability to comply with the  
12          terms and conditions of any permitted netting  
13          or offset arrangements with other clearing orga-  
14          nizations; and

15          “(F) for physical settlements, establish  
16          rules that clearly state the clearing agency’s ob-  
17          ligations with respect to physical deliveries. The  
18          risks from these obligations shall be identified  
19          and managed.

20          “(6) TREATMENT OF FUNDS.—

21                 “(A) The clearing agency shall have stand-  
22                 ards and procedures designed to protect and en-  
23                 sure the safety of member and participant  
24                 funds and assets.



1           “(B) The clearing agency shall hold mem-  
2           ber and participant funds and assets in a man-  
3           ner whereby risk of loss or of delay in the clear-  
4           ing agency’s access to the assets and funds is  
5           minimized.

6           “(C) Assets and funds invested by the  
7           clearing agency shall be held in instruments  
8           with minimal credit, market, and liquidity risks.

9           “(7) DEFAULT RULES AND PROCEDURES.—

10           “(A) The clearing agency shall have rules  
11           and procedures designed to allow for the effi-  
12           cient, fair, and safe management of events  
13           when members or participants become insolvent  
14           or otherwise default on their obligations to the  
15           clearing agency.

16           “(B) The clearing agency’s default proce-  
17           dures shall be clearly stated, and they shall en-  
18           sure that the clearing agency can take timely  
19           action to contain losses and liquidity pressures  
20           and to continue meeting its obligations.

21           “(C) The default procedures shall be pub-  
22           licly available.

23           “(8) RULE ENFORCEMENT.—The clearing agen-  
24           cy shall—

1           “(A) maintain adequate arrangements and  
2 resources for the effective monitoring and en-  
3 forcement of compliance with rules of the clear-  
4 ing agency and for resolution of disputes; and

5           “(B) have the authority and ability to dis-  
6 cipline, limit, suspend, or terminate a member’s  
7 or participant’s activities for violations of rules  
8 of the clearing agency.

9           “(9) SYSTEM SAFEGUARDS.—The clearing  
10 agency shall—

11           “(A) establish and maintain a program of  
12 risk analysis and oversight to identify and mini-  
13 mize sources of operational risk through the de-  
14 velopment of appropriate controls and proce-  
15 dures, and the development of automated sys-  
16 tems, that are reliable, secure, and have ade-  
17 quate scalable capacity;

18           “(B) establish and maintain emergency  
19 procedures, backup facilities, and a plan for dis-  
20 aster recovery that allows for the timely recov-  
21 ery and resumption of operations and the ful-  
22 fillment of the clearing agency’s responsibilities  
23 and obligations; and

24           “(C) periodically conduct tests to verify  
25 that backup resources are sufficient to ensure

1 continued order processing and trade matching,  
2 price reporting, market surveillance, and main-  
3 tenance of a comprehensive and accurate audit  
4 trail.

5 “(10) REPORTING.—The clearing agency shall  
6 provide to the Commission all information necessary  
7 for the Commission to conduct oversight of the  
8 clearing agency.

9 “(11) RECORDKEEPING.—The clearing agency  
10 shall maintain records of all activities related to the  
11 business of the clearing agency as a clearing agency  
12 in a form and manner acceptable to the Commission  
13 for a period of 5 years.

14 “(12) PUBLIC INFORMATION.—

15 “(A) The clearing agency shall provide  
16 market participants with sufficient information  
17 to identify and evaluate accurately the risks and  
18 costs associated with using the clearing agen-  
19 cy’s services.

20 “(B) The clearing agency shall make infor-  
21 mation concerning the rules and operating pro-  
22 cedures governing its clearing and settlement  
23 systems (including default procedures) available  
24 to market participants.

1           “(C) The clearing agency shall disclose  
2 publicly and to the Commission information  
3 concerning—

4           “(i) the terms and conditions of con-  
5 tracts, agreements, and transactions  
6 cleared and settled by the clearing agency;

7           “(ii) clearing and other fees that the  
8 clearing agency charges its members and  
9 participants;

10           “(iii) the margin-setting methodology  
11 and the size and composition of the finan-  
12 cial resource package of the clearing agen-  
13 cy;

14           “(iv) other information relevant to  
15 participation in the settlement and clearing  
16 activities of the clearing agency; and

17           “(v) daily settlement prices, volume,  
18 and open interest for all contracts settled  
19 or cleared by it.

20           “(13) INFORMATION-SHARING.—The clearing  
21 agency shall—

22           “(A) enter into and abide by the terms of  
23 all appropriate and applicable domestic and  
24 international information-sharing agreements;  
25 and

1           “(B) use relevant information obtained  
2           from the agreements in carrying out the clear-  
3           ing organization’s risk management program.

4           “(14) ANTITRUST CONSIDERATIONS.—Unless  
5           appropriate to achieve the purposes of this chapter,  
6           the clearing agency shall avoid—

7           “(A) adopting any rule or taking any ac-  
8           tion that results in any unreasonable restraint  
9           of trade; or

10          “(B) imposing any material anticompeti-  
11          tive burden.

12          “(15) GOVERNANCE FITNESS STANDARDS.—

13          “(A) The clearing agency shall establish  
14          governance arrangements that are transparent  
15          in order to fulfill public interest requirements  
16          and to support the objectives of owners and  
17          participants.

18          “(B) The clearing agency shall establish  
19          and enforce appropriate fitness standards for  
20          directors, members of any disciplinary com-  
21          mittee, and members of the clearing agency,  
22          and any other persons with direct access to the  
23          settlement or clearing activities of the clearing  
24          agency, including any parties affiliated with any  
25          of the persons described in this subparagraph.

1           “(16) CONFLICTS OF INTEREST.—The clearing  
2       agency shall establish and enforce rules to minimize  
3       conflicts of interest in the decisionmaking process of  
4       the clearing agency and establish a process for re-  
5       solving such conflicts of interest.

6           “(17) COMPOSITION OF THE BOARDS.—The  
7       clearing agency shall ensure that the composition of  
8       the governing board or committee includes market  
9       participants.

10          “(18) LEGAL RISK.—The clearing agency shall  
11       have a well-founded, transparent, and enforceable  
12       legal framework for each aspect of its activities.

13          “(m) CONSULTATION.—The Commission and the  
14       Commodity Futures Trading Commission shall consult  
15       with the appropriate Federal banking agencies and each  
16       other prior to adopting rules under this section.

17          “(n) HARMONIZATION OF RULES.—Not later than  
18       180 days after the effective date of the Over-the-Counter  
19       Derivatives Markets Act of 2009, the Commission and the  
20       Commodity Futures Trading Commission shall jointly  
21       adopt uniform rules governing persons that are registered  
22       as derivatives clearing organizations for swaps under the  
23       Commodity Exchange Act (7 U.S.C. 1, et seq.) and per-  
24       sons that are registered as clearing agencies for security-

1 based swaps under the Securities Exchange Act of 1934  
2 (15 U.S.C. 78a, et seq.).”.

3 (c) EXECUTION OF SECURITY-BASED SWAPS.—The  
4 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)  
5 is amended by inserting after section 5 the following:

6 **“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

7 “(a) TRADE EXECUTION.—With respect to trans-  
8 actions involving security-based swaps subject to the re-  
9 quirement of section 3B and where both counterparties  
10 are either security-based swap dealers or major security-  
11 based swap participants, such counterparties must either:

12 “(1) execute the transaction on a national secu-  
13 rities exchange registered pursuant to section 6(a)  
14 (in which event such transaction shall be subject to  
15 regulation under this title as a transaction in a secu-  
16 rity);

17 “(2) execute the transaction on a swap execu-  
18 tion facility registered with the Commission;

19 “(3) execute the transaction on a foreign swap  
20 execution facility that is subject to regulation as  
21 such under the laws of a foreign jurisdiction; or

22 “(4) if the transaction is not executed on an en-  
23 tity listed in paragraph (1), (2), or (3), comply with  
24 any recordkeeping and end-of-day transaction re-  
25 porting requirements—

1           “(A) as may be prescribed by the Commis-  
2           sion with respect to security-based swaps sub-  
3           ject to the requirements of section 3B and  
4           where both counterparties are either security-  
5           based swap dealers or major security-based  
6           swap participants; or

7           “(B) as may be prescribed by the relevant  
8           foreign regulator in the case of security-based  
9           swaps subject to the requirements of section 3B  
10          and where both counterparties are either secu-  
11          rity-based swap dealers or major security-based  
12          swap participants entered into by—

13               “(i) a foreign swap dealer or a foreign  
14               swap market participant; or

15               “(ii) a non-foreign swap dealer or  
16               major swap participant that is entering  
17               into the security-based swap either outside  
18               of the United States, its territories and  
19               possessions or with a foreign counterparty.

20          “(b) EXCHANGE TRADING.—In adopting rules and  
21          regulations, the Commission shall endeavor to eliminate  
22          unnecessary impediments to the trading on national secu-  
23          rities exchanges or swap execution facilities, agreements  
24          or transactions that would be commodity swaps but for



1 the trading of such contracts, agreements or transactions  
 2 on such a designated contract market.’”.

3 (d) ALTERNATIVE SWAP EXECUTION FACILITIES.—  
 4 The Securities Exchange Act of 1934 (15 U.S.C. 78a, et  
 5 seq.) is amended by adding after section 3B the following:  
 6 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

7 “(a) REGISTRATION.—

8 “(1) IN GENERAL.—No person may operate a  
 9 facility for the trading of security-based swaps un-  
 10 less the facility is registered as an alternative swap  
 11 execution facility under this section.

12 “(2) DUAL REGISTRATION.—Any person that is  
 13 required to be registered as an alternative swap exe-  
 14 cution facility under this section shall register with  
 15 the Commission regardless of whether that person  
 16 also is registered with the Commodity Futures Trad-  
 17 ing Commission as an alternative swap execution fa-  
 18 cility.

19 “(b) REQUIREMENTS FOR TRADING.—An alternative  
 20 swap execution facility that is registered under subsection  
 21 (a) may trade any security-based swap.

22 “(c) TRADING BY EXCHANGES.—An exchange shall,  
 23 to the extent that the exchange also operates an alter-  
 24 native swap execution facility and uses the same electronic  
 25 trade execution system for trading on the exchange and

1 the alternative swap execution facility, identify whether  
2 the electronic trading is taking place on the exchange or  
3 the alternative swap execution facility.

4 “(d) CRITERIA FOR REGISTRATION.—

5 “(1) IN GENERAL.—To be registered as an al-  
6 ternative swap execution facility, the facility shall be  
7 required to demonstrate to the Commission that it  
8 meets the criteria specified herein.

9 “(2) DETERRENCE OF ABUSES.—The swap exe-  
10 cution facility shall establish and enforce trading  
11 and participation rules that will deter abuses and  
12 have the capacity to detect, investigate, and enforce  
13 those rules, including means to—

14 “(A) obtain information necessary to per-  
15 form the functions required under this section;  
16 or

17 “(B) use means to—

18 “(i) provide market participants with  
19 impartial access to the market; and

20 “(ii) capture information that may be  
21 used in establishing whether rule violations  
22 have occurred.

23 “(3) TRADING PROCEDURES.—The swap execu-  
24 tion facility shall establish and enforce rules or  
25 terms and conditions defining, or specifications de-

1       tailing, trading procedures to be used in entering  
2       and executing orders traded on or through its facili-  
3       ties.

4           “(4) FINANCIAL INTEGRITY OF TRANS-  
5       ACTIONS.—The swap execution facility shall estab-  
6       lish and enforce rules and procedures for ensuring  
7       the financial integrity of security-based swaps en-  
8       tered on or through its facilities, including the clear-  
9       ance and settlement of the security-based swaps.

10       “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP  
11       EXECUTION FACILITIES.—

12           “(1) IN GENERAL.—To maintain its registra-  
13       tion as an alternative swap execution facility, the fa-  
14       cility shall comply with the core principles specified  
15       in this subsection and any requirement that the  
16       Commission may impose by rule or regulation. Ex-  
17       cept where the Commission determines otherwise by  
18       rule or regulation, the facility shall have reasonable  
19       discretion in establishing the manner in which it  
20       complies with these core principles.

21           “(2) COMPLIANCE WITH RULES.—The swap  
22       execution facility shall monitor and enforce compli-  
23       ance with any of the rules of the facility, including  
24       the terms and conditions of the security-based swaps

1 traded on or through the facility and any limitations  
2 on access to the facility.

3 “(3) SECURITY-BASED SWAPS NOT READILY  
4 SUSCEPTIBLE TO MANIPULATION.—The swap execu-  
5 tion facility shall permit trading only in security-  
6 based swaps that are not readily susceptible to ma-  
7 nipulation.

8 “(4) MONITORING OF TRADING.—The swap  
9 execution facility shall monitor trading in security-  
10 based swaps to prevent manipulation and price dis-  
11 tortion through surveillance, compliance, and dis-  
12 ciplinary practices and procedures, including meth-  
13 ods for conducting real-time monitoring of trading  
14 and comprehensive and accurate trade reconstruc-  
15 tions.

16 “(5) ABILITY TO OBTAIN INFORMATION.—The  
17 swap execution facility shall—

18 “(A) establish and enforce rules that will  
19 allow the facility to obtain any necessary infor-  
20 mation to perform any of the functions de-  
21 scribed in this subsection;

22 “(B) provide the information to the Com-  
23 mission upon request; and

1           “(C) have the capacity to carry out such  
2           international information-sharing agreements as  
3           the Commission may require.

4           “(6) EMERGENCY AUTHORITY.—The swap exe-  
5           cution facility shall adopt rules to provide for the ex-  
6           ercise of emergency authority, in consultation or co-  
7           operation with the Commission, where necessary and  
8           appropriate, including the authority to suspend or  
9           curtail trading in a security-based swap.

10          “(7) TIMELY PUBLICATION OF TRADING INFOR-  
11          MATION.—The swap execution facility shall make  
12          public timely information on price, trading volume,  
13          and other trading data to the extent prescribed by  
14          the Commission.

15          “(8) RECORDKEEPING AND REPORTING.—The  
16          swap execution facility shall maintain records of all  
17          activities related to the business of the facility, in-  
18          cluding a complete audit trail, in a form and manner  
19          acceptable to the Commission for a period of 5  
20          years, and report to the Commission all information  
21          determined by the Commission to be necessary or  
22          appropriate for the Commission to perform its re-  
23          sponsibilities under this Act in a form and manner  
24          acceptable to the Commission. The Commission shall  
25          adopt data collection and reporting requirements for

1 alternative swap execution facilities that are com-  
2 parable to corresponding requirements for clearing  
3 agencies and security-based swap repositories.

4 “(9) ANTITRUST CONSIDERATIONS.—Unless  
5 necessary or appropriate to achieve the purposes of  
6 this Act, the swap execution facility shall avoid—

7 “(A) adopting any rules or taking any ac-  
8 tions that result in any unreasonable restraints  
9 of trade; or

10 “(B) imposing any material anticompeti-  
11 tive burden on trading on the swap execution  
12 facility.

13 “(10) CONFLICTS OF INTEREST.—The swap  
14 execution facility shall—

15 “(A) establish and enforce rules to mini-  
16 mize conflicts of interest in its decision-making  
17 process; and

18 “(B) establish a process for resolving the  
19 conflicts of interest.

20 “(11) DESIGNATION OF COMPLIANCE OFFI-  
21 CER.—

22 “(A) IN GENERAL.—Each alternative swap  
23 execution facility shall designate an individual  
24 to serve as a compliance officer.

25 “(B) DUTIES.—The compliance officer—

1 “(i) shall report directly to the board  
2 or to the senior officer of the facility;

3 “(ii) shall—

4 “(I) review compliance with the  
5 core principles in section 3B(e).

6 “(II) in consultation with the  
7 board of the facility, a body per-  
8 forming a function similar to that of  
9 a board, or the senior officer of the  
10 facility, resolve any conflicts of inter-  
11 est that may arise;

12 “(III) be responsible for admin-  
13 istering the policies and procedures  
14 required to be established pursuant to  
15 this section; and

16 “(IV) ensure compliance with se-  
17 curities laws and the rules and regula-  
18 tions issued thereunder, including  
19 rules prescribed by the Commission  
20 pursuant to this section; and

21 “(iii) shall establish procedures for re-  
22 mediation of non-compliance issues found  
23 during compliance office reviews,  
24 lookbacks, internal or external audit find-  
25 ings, self-reported errors, or through vali-

1           dated complaints. Procedures will establish  
2           the handling, management response, reme-  
3           diation, retesting, and closing of non-  
4           compliant issues.

5           “(C) ANNUAL REPORTS REQUIRED.—The  
6           compliance officer shall annually prepare and  
7           sign a report on the compliance of the facility  
8           with the securities laws and its policies and pro-  
9           cedures, including its code of ethics and conflict  
10          of interest policies, in accordance with rules  
11          prescribed by the Commission. Such compliance  
12          report shall accompany the financial reports of  
13          the facility that are required to be furnished to  
14          the Commission pursuant to this section and  
15          shall include a certification that, under penalty  
16          of law, the report is accurate and complete.

17          “(f) EXEMPTIONS.—The Commission may exempt,  
18          conditionally or unconditionally, an alternative swap exe-  
19          cution facility from registration under this section if the  
20          Commission finds that such organization is subject to  
21          comparable, comprehensive supervision and regulation on  
22          a consolidated basis by the Commodity Futures Trading  
23          Commission, a Prudential Regulator or the appropriate  
24          governmental authorities in the organization’s home coun-  
25          try.



1       “(g) HARMONIZATION OF RULES.—Not later than  
2 180 days after the date of enactment of the Over-the-  
3 Counter Derivatives Markets Act of 2009, the Commission  
4 and the Commodity Futures Trading Commission shall  
5 jointly prescribe rules governing the regulation of alter-  
6 native swap execution facilities under this section and sec-  
7 tion 5h of the Commodity Exchange Act (7 U.S.C. 7b-  
8 3).”.

9       (e) SEGREGATION OF ASSETS HELD AS COLLATERAL  
10 IN SWAP TRANSACTIONS.—The Securities Exchange Act  
11 of 1934 (15 U.S.C. 78a, et seq.) is further amended by  
12 adding after section 3C (as added by subsection (b) the  
13 following:

14       **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
15                               **IN SWAP TRANSACTIONS.**

16       “(a) CLEARED SWAPS.—A security-based swap deal-  
17 er or clearing agency by or through which funds or other  
18 property are held as margin or collateral to secure the obli-  
19 gations of a counterparty under a security-based swap to  
20 be cleared by or through a derivatives clearing agency  
21 shall segregate, maintain, and use the funds or other prop-  
22 erty for the benefit of the counterparty, in accordance with  
23 such rules and regulations as the Commission or Pruden-  
24 tial Regulator shall prescribe. Any such funds or other

1 property shall be treated as customer property under this  
2 Act.

3 “(b) OVER-THE-COUNTER SWAPS.—At the request of  
4 a counterparty to a security-based swap who provides  
5 funds or other property to a swap dealer as margin or  
6 collateral to secure the obligations of the counterparty  
7 under a security-based swap between the counterparty and  
8 the swap dealer that is not submitted for clearing to a  
9 derivatives clearing agency, the swap dealer shall seg-  
10 regate the funds or other property for the benefit of the  
11 counterparty, and maintain the funds or other property  
12 in an account which is carried by a third-party custodian  
13 and designated as a segregated account for the  
14 counterparty, in accordance with such rules and regula-  
15 tions as the Commission or Prudential Regulator may pre-  
16 scribe. This subsection shall not be interpreted to preclude  
17 commercial arrangements regarding the investment of the  
18 segregated funds or other property and the related alloca-  
19 tion of gains and losses resulting from any such invest-  
20 ment.”.

21 (f) TRADING IN SECURITY-BASED SWAP AGREE-  
22 MENTS.—Section 6 of the Securities Exchange Act of  
23 1934 (15 U.S.C. 78f) is amended by adding at the end  
24 the following:

1       “(l) It shall be unlawful for any person to effect a  
2 transaction in a security-based swap with or for a person  
3 that is not an eligible contract participant unless such  
4 transaction is effected on a national securities exchange  
5 registered pursuant to subsection (b).”.

6       (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-  
7 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)  
8 through (3) of section 9(b) of the Securities Exchange Act  
9 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read  
10 as follows:

11           “(1) any transaction in connection with any se-  
12 curity whereby any party to such transaction ac-  
13 quires (A) any put, call, straddle, or other option or  
14 privilege of buying the security from or selling the  
15 security to another without being bound to do so;  
16 (B) any security futures product on the security; or  
17 (C) any security-based swap involving the security or  
18 the issuer of the security;

19           “(2) any transaction in connection with any se-  
20 curity with relation to which he has, directly or indi-  
21 rectly, any interest in any (A) such put, call, strad-  
22 dle, option, or privilege; (B) such security futures  
23 product; or (C) such security-based swap; or

24           “(3) any transaction in any security for the ac-  
25 count of any person who he has reason to believe

1       has, and who actually has, directly or indirectly, any  
2       interest in any (A) such put, call, straddle, option,  
3       or privilege; (B) such security futures product with  
4       relation to such security; or (C) any security-based  
5       swap involving such security or the issuer of such se-  
6       curity.”.

7       (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,  
8       MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-  
9       BASED SWAPS.—Section 9 of the Securities Exchange Act  
10      of 1934 (15 U.S.C. 78i) is amended by adding at the end  
11      the following:

12       “(i) It shall be unlawful for any person, directly or  
13      indirectly, by the use of any means or instrumentality of  
14      interstate commerce or of the mails, or of any facility of  
15      any national securities exchange, to effect any transaction  
16      in, or to induce or attempt to induce the purchase or sale  
17      of, any security-based swap, in connection with which such  
18      person engages in any fraudulent, deceptive, or manipula-  
19      tive act or practice, makes any fictitious quotation, or en-  
20      gages in any transaction, practice, or course of business  
21      which operates as a fraud or deceit upon any person. The  
22      Commission shall, for the purposes of this paragraph, by  
23      rules and regulations define, and prescribe means reason-  
24      ably designed to prevent, such transactions, acts, prac-

1 tices, and courses of business as are fraudulent, deceptive,  
 2 or manipulative, and such quotations as are fictitious.”.

3 (i) POSITION LIMITS AND POSITION ACCOUNT-  
 4 ABILITY FOR SECURITY-BASED SWAPS.—The Securities  
 5 Exchange Act of 1934 is amended by inserting after sec-  
 6 tion 10A (15 U.S.C. 78j–1) the following new section:

7 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**  
 8 **ABILITY FOR SECURITY-BASED SWAPS AND**  
 9 **LARGE TRADER REPORTING.**

10 “(a) POSITION LIMITS.—As a means reasonably de-  
 11 signed to prevent fraud and manipulation, the Commission  
 12 may, by rule or regulation, as necessary or appropriate  
 13 in the public interest or for the protection of investors,  
 14 establish limits (including related hedge exemption provi-  
 15 sions) on the size of positions in any security-based swap  
 16 or security-based swap agreement that may be held by any  
 17 person. In establishing such limits, the Commission may  
 18 require any person to aggregate positions in—

19 “(1) any security-based swap and any security  
 20 or loan or group or index of securities or loans on  
 21 which such security-based swap is based, which such  
 22 security-based swap references, or to which such se-  
 23 curity-based swap is related as described in section  
 24 (a)(3) of the Over-the-Counter Derivatives Markets  
 25 Act of 2009, and any security-based swap agreement

1 and any other instrument relating to such security  
2 or loan or group or index of securities or loans; or

3 “(2) any security-based swap and (A) any secu-  
4 rity or group or index of securities, the price, yield,  
5 value, or volatility of which, or of which any interest  
6 therein, is the basis for a material term of such se-  
7 curity-based swap as described in section 3(a)(76) of  
8 the Securities Exchange Act of 1934 and (B) any  
9 security-based swap and any other instrument relat-  
10 ing to the same security or group or index of securi-  
11 ties.

12 “(b) EXEMPTIONS.—The Commission, by rule, regu-  
13 lation, or order, may conditionally or unconditionally ex-  
14 empt any person or class of persons, any security-based  
15 swap or class of security-based swaps, or any transaction  
16 or class of transactions from any requirement it may es-  
17 tablish under this section with respect to position limits.

18 “(c) SRO RULES.—

19 “(1) IN GENERAL.—As a means reasonably de-  
20 signed to prevent fraud or manipulation, the Com-  
21 mission, by rule, regulation, or order, as necessary  
22 or appropriate in the public interest, for the protec-  
23 tion of investors, or otherwise in furtherance of the  
24 purposes of this title, may direct a self-regulatory  
25 organization—

1           “(A) to adopt rules regarding the size of  
2           positions in any security-based swap that may  
3           be held by—

4                   “(i) any member of such self-regu-  
5                   latory organization; or

6                   “(ii) any person for whom a member  
7                   of such self-regulatory organization effects  
8                   transactions in such security-based swap or  
9                   other security-based swap agreement; and

10           “(B) to adopt rules reasonably designed to  
11           ensure compliance with requirements prescribed  
12           by the Commission under paragraph (c)(1)(A).

13           “(2) REQUIREMENT TO AGGREGATE POSI-  
14           TIONS.—In establishing such limits, the self-regu-  
15           latory organization may require such member or per-  
16           son to aggregate positions in—

17                   “(A) any security-based swap and any se-  
18                   curity or loan or group or index of securities or  
19                   loans on which such security-based swap is  
20                   based, which such security-based swap ref-  
21                   erences, or to which such security-based swap is  
22                   related as described in section 3(a) of the Over-  
23                   the-Counter Derivatives Markets Act of 2009,  
24                   and any security-based swap agreement and  
25                   any other instrument relating to such security

1 or loan or group or index of securities or loans;

2 or

3 “(B)(i) any security-based swap;

4 “(ii) any security or group or index of se-  
5 curities, the price, yield, value, or volatility of  
6 which, or of which any interest therein, is the  
7 basis for a material term of such security-based  
8 swap as described in section 3(a)(76) of the Se-  
9 curities Exchange Act of 1934; and

10 “(iii) any security-based swap and any  
11 other instrument relating to the same security  
12 or group or index of securities.

13 “(d) LARGE TRADER REPORTING.—The Commis-  
14 sion, by rule or regulation, may require any person that  
15 effects transactions for such person’s own account or the  
16 account of others in any securities-based swap or security-  
17 based swap agreement and any security or loan or group  
18 or index of securities or loans as set forth in paragraphs  
19 (a)(1) and (2) under this section to report such informa-  
20 tion as the Commission may prescribe regarding any posi-  
21 tion or positions in any security-based swap or security-  
22 based swap agreement and any security or loan or group  
23 or index of securities or loans and any other instrument  
24 relating to such security or loan or group or index of secu-



1 rities or loans as set forth in paragraphs (a)(1) and (2)  
 2 under this section.”.

3 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-  
 4 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the  
 5 Securities Exchange Act of 1934 (15 U.S.C. 78m) is  
 6 amended by adding at the end the following:

7 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-  
 8 BASED SWAP DATA.—

9 “(1) IN GENERAL.—The Commission, or a per-  
 10 son designated by the Commission pursuant to para-  
 11 graph (2), shall make available to the public, in a  
 12 manner that does not disclose the business trans-  
 13 actions and market positions of any person, aggre-  
 14 gate data on security-based swap trading volumes  
 15 and positions from the sources set forth in para-  
 16 graph (3).

17 “(2) DESIGNEE OF THE COMMISSION.—The  
 18 Commission may designate a clearing agency or a  
 19 security-based swap repository to carry out the pub-  
 20 lic reporting described in paragraph (1).

21 “(3) SOURCES OF INFORMATION.—The sources  
 22 of the information to be publicly reported as de-  
 23 scribed in paragraph (1) are—

24 “(A) clearing agencies pursuant to section  
 25 3A;

1           “(B) security-based swap repositories pur-  
2           suant to subsection (n); and

3           “(C) reports received by the Commission  
4           pursuant to section 13A.

5           “(n) SECURITY-BASED SWAP REPOSITORIES.—

6           “(1) REGISTRATION REQUIREMENT.—

7           “(A) IN GENERAL.—It shall be unlawful  
8           for a security-based swap repository, unless reg-  
9           istered with the Commission, directly or indi-  
10          rectly to make use of the mails or any means  
11          or instrumentality of interstate commerce to  
12          perform the functions of a security-based swap  
13          repository.

14          “(B) INSPECTION AND EXAMINATION.—  
15          Registered security-based swap repositories  
16          shall be subject to inspection and examination  
17          by any representatives of the Commission.

18          “(2) STANDARD SETTING.—

19          “(A) DATA IDENTIFICATION.—The Com-  
20          mission shall prescribe standards that specify  
21          the data elements for each security-based swap  
22          that shall be collected and maintained by each  
23          security-based swap repository.

24          “(B) DATA COLLECTION AND MAINTEN-  
25          NANCE.—The Commission shall prescribe data

1 collection and data maintenance standards for  
2 security-based swap repositories.

3 “(C) COMPARABILITY.—The standards  
4 prescribed by the Commission under this sub-  
5 section shall be comparable to the data stand-  
6 ards imposed by the Commission on clearing  
7 agencies that clear security-based swaps.

8 “(3) DUTIES.—A security-based swap reposi-  
9 tory shall—

10 “(A) accept data prescribed by the Com-  
11 mission for each security-based swap under this  
12 paragraph (2);

13 “(B) maintain such data in such form and  
14 manner and for such period as may be required  
15 by the Commission;

16 “(C) provide to the Commission, or its des-  
17 ignee, such information as is required by, and  
18 in a form and at a frequency to be determined  
19 by, the Commission, in order to comply with the  
20 public reporting requirements contained in sub-  
21 section (m); and

22 “(D) make available, on a confidential  
23 basis, all data obtained by the security-based  
24 swap repository, including individual counter-  
25 party trade and position data, to the Commis-

1           sion, the appropriate Federal banking agencies,  
2           the Commodity Futures Trading Commission,  
3           the Financial Services Oversight Council, and  
4           the Department of Justice or to other persons  
5           the Commission deems appropriate, including  
6           foreign financial supervisors (including foreign  
7           futures authorities), foreign central banks, and  
8           foreign ministries.

9           “(4) REQUIRED REGISTRATION FOR SECURITY-  
10          BASED SWAP REPOSITORIES.—Any person that is re-  
11          quired to be registered as a securities-based swap re-  
12          pository under this subsection shall register with the  
13          Commission, regardless of whether that person also  
14          is registered with the Commodity Futures Trading  
15          Commission as a swap repository.

16          “(5) HARMONIZATION OF RULES.—Not later  
17          than 180 days after the date of enactment of the  
18          Over-the-Counter Derivatives Markets Act of 2009,  
19          the Commission and the Commodity Futures Trad-  
20          ing Commission shall jointly adopt uniform rules  
21          governing persons that are registered under this sec-  
22          tion and persons that are registered as swap reposi-  
23          tories under the Commodity Exchange Act (7 U.S.C.  
24          1, et seq.), including uniform rules that specify the

1 data elements that shall be collected and maintained  
2 by each repository.

3 “(6) EXEMPTIONS.—The Commission may ex-  
4 empt, conditionally or unconditionally, a security-  
5 based swap repository from the requirements of this  
6 section if the Commission finds that such security-  
7 based swap repository is subject to comparable, com-  
8 prehensive supervision or regulation on a consoli-  
9 dated basis by the Commodity Futures Trading  
10 Commission, a Prudential Regulator or the appro-  
11 priate governmental authorities in the organization’s  
12 home country.”.

13 **SEC. 154. REGISTRATION AND REGULATION OF SWAP DEAL-**  
14 **ERS AND MAJOR SWAP PARTICIPANTS.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a,  
16 et seq.) is amended by inserting after section 15E (15  
17 U.S.C. 78o–7) the following:

18 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**  
19 **BASED SWAP DEALERS AND MAJOR SECU-**  
20 **RITY-BASED SWAP PARTICIPANTS.**

21 “(a) REGISTRATION.—

22 “(1) It shall be unlawful for any person to act  
23 as a security-based swap dealer unless such person  
24 is registered as a security-based swap dealer with  
25 the Commission.

1           “(2) It shall be unlawful for any person to act  
2           as a major security-based swap participant unless  
3           such person is registered as a major security-based  
4           swap participant with the Commission.

5           “(b) REQUIREMENTS.—

6           “(1) IN GENERAL.—A person shall register as  
7           a security-based swap dealer or major security-based  
8           swap participant by filing a registration application  
9           with the Commission.

10          “(2) CONTENTS.—The application shall be  
11          made in such form and manner as prescribed by the  
12          Commission, giving any information and facts as the  
13          Commission may deem necessary concerning the  
14          business in which the applicant is or will be engaged.  
15          Such person, when registered as a security-based  
16          swap dealer or major security-based swap partici-  
17          pant, shall continue to report and furnish to the  
18          Commission such information pertaining to such  
19          person’s business as the Commission may require.

20          “(3) EXPIRATION.—Each registration shall ex-  
21          pire at such time as the Commission may by rule or  
22          regulation prescribe.

23          “(4) RULES.—Except as provided in sub-  
24          sections (c), (d) and (e), the Commission may pre-  
25          scribe rules applicable to security-based swap dealers

1 and major security-based swap participants, includ-  
2 ing rules that limit the activities of security-based  
3 swap dealers and major security-based swap partici-  
4 pants. Except as provided in subsections (c) and (e),  
5 the Commission may provide conditional or uncondi-  
6 tional exemptions from rules prescribed under this  
7 section for security-based swap dealers and major  
8 security-based swap participants that are subject to  
9 substantially similar requirements as brokers or  
10 dealers.

11 “(5) TRANSITION.—Rules adopted under this  
12 section shall provide for the registration of security-  
13 based swap dealers and major security-based swap  
14 participants no later than 1 year after the effective  
15 date of the Over-the-Counter Derivatives Markets  
16 Act of 2009.

17 “(c) DUAL REGISTRATION.—

18 “(1) SECURITY-BASED SWAP DEALERS.—Any  
19 person that is required to be registered as a secu-  
20 rity-based swap dealer under this section shall reg-  
21 ister with the Commission regardless of whether that  
22 person also is a bank or is registered with the Com-  
23modity Futures Trading Commission as a swap deal-  
24 er.

1           “(2) MAJOR SECURITY-BASED SWAP PARTICI-  
2           PANTS.—Any person that is required to be reg-  
3           istered as a major security-based swap participant  
4           under this section shall register with the Commis-  
5           sion regardless of whether that person also is a bank  
6           or is registered with the Commodity Futures Trad-  
7           ing Commission as a major swap participant.

8           “(d) JOINT RULES.—

9           “(1) IN GENERAL.—Not later than 180 days  
10          after the effective date of the Over-the-Counter De-  
11          rivatives Markets Act of 2009, the Commission and  
12          the Commodity Futures Trading Commission shall  
13          jointly adopt uniform rules for persons that are reg-  
14          istered as security-based swap dealers or major secu-  
15          rity-based swap participants under this Act and per-  
16          sons that are registered as swap dealers or major  
17          swap participants under the Commodity Exchange  
18          Act (7 U.S.C. 1, et seq.).

19          “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
20          MENTS.—The Commission and the Commodity Fu-  
21          tures Trading Commission shall not prescribe rules  
22          imposing prudential requirements (including activity  
23          restrictions) on security-based swap dealers or major  
24          security-based swap participants for which there is a  
25          Prudential Regulator. This provision shall not be



1 construed as limiting the authority of the Commis-  
2 sion and the Commodity Futures Trading Commis-  
3 sion to prescribe appropriate business conduct, re-  
4 porting, and recordkeeping requirements to protect  
5 investors.

6 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

7 “(1) IN GENERAL.—

8 “(A) BANK SECURITY-BASED SWAP DEAL-  
9 ERS AND MAJOR SECURITY-BASED SWAP PAR-  
10 TICIPANTS.—Each registered security-based  
11 swap dealer and major security-based swap par-  
12 ticipant for which there is a Prudential Regu-  
13 lator shall meet such minimum capital require-  
14 ments and minimum initial and variation mar-  
15 gin requirements as the Prudential Regulators  
16 shall by rule or regulation jointly prescribe to  
17 help ensure the safety and soundness of the se-  
18 curity-based swap dealer or major security-  
19 based swap participant.

20 “(B) NONBANK SECURITY-BASED SWAP  
21 DEALERS AND MAJOR SECURITY-BASED SWAP  
22 PARTICIPANTS.—Each registered security-based  
23 swap dealer and major security-based swap par-  
24 ticipant for which there is not a Prudential  
25 Regulator shall meet such minimum capital re-

1           quirements and minimum initial and variation  
2           margin requirements as the Commission and  
3           the Commodity Futures Trading Commission  
4           shall by rule or regulation jointly prescribe to  
5           help ensure the safety and soundness of the se-  
6           curity-based swap dealer or major security-  
7           based swap participant.

8           “(2) JOINT RULES.—

9                   “(A) BANK SECURITY-BASED SWAP DEAL-  
10           ERS AND MAJOR SECURITY-BASED SWAP PAR-  
11           TICIPANTS.—Within 180 days of the enactment  
12           of the Over-the-Counter Derivatives Markets  
13           Act of 2009, the Prudential Regulators, in con-  
14           sultation with the Commission and the Com-  
15           modity Futures Trading Commission, shall  
16           jointly adopt rules imposing capital and margin  
17           requirements under this subsection for security-  
18           based swap dealers and major security-based  
19           swap participants.

20                   “(B) NONBANK SECURITY-BASED SWAP  
21           DEALERS AND MAJOR SECURITY-BASED SWAP  
22           PARTICIPANTS.—Within 180 days of the enact-  
23           ment of the Over-the-Counter Derivatives Mar-  
24           kets Act of 2009, the Commission and the  
25           Commodity Futures Trading Commission, in

1 consultation with the Prudential Regulators,  
2 shall jointly adopt rules imposing capital and  
3 margin requirements under this subsection for  
4 security-based swap dealers and major security-  
5 based swap participants for which there is no  
6 Prudential Regulator.

7 “(3) CAPITAL.—

8 “(A) BANK SECURITY-BASED SWAP DEAL-  
9 ERS AND MAJOR SECURITY-BASED SWAP PAR-  
10 TICIPANTS.—In setting capital requirements  
11 under this subsection, the Prudential Regu-  
12 lators shall impose—

13 “(i) a capital requirement that is  
14 greater than zero for security-based swaps  
15 that are cleared by a clearing agency; and

16 “(ii) to offset the greater risk to the  
17 security-based swap dealer or major secu-  
18 rity-based swap participant and to the fi-  
19 nancial system arising from the use of se-  
20 curity-based swaps that are not centrally  
21 cleared, higher capital requirements for se-  
22 curity-based swaps that are not cleared by  
23 a clearing agency than for security-based  
24 swaps that are centrally cleared.

1           “(B) NONBANK SECURITY-BASED SWAP  
2           DEALERS AND MAJOR SECURITY-BASED SWAP  
3           PARTICIPANTS.—Capital requirements set by  
4           the Commission and the Commodity Futures  
5           Trading Commission under this subsection shall  
6           be as strict as or stricter than the capital re-  
7           quirements set by the Prudential Regulators  
8           under this subsection.

9           “(C) BANK HOLDING COMPANIES.—Capital  
10          requirements set by the Board for security-  
11          based swaps of bank holding companies on a  
12          consolidated basis shall be as strict as or strict-  
13          er than the capital requirements set by the Pru-  
14          dential Regulators under this subsection.

15          “(4) MARGIN.—

16          “(A) BANK SECURITY-BASED SWAP DEAL-  
17          ERS AND MAJOR SECURITY-BASED SWAP PAR-  
18          TICIPANTS.—The Prudential Regulators shall  
19          impose both initial and variation margin re-  
20          quirements under this subsection on all secu-  
21          rity-based swaps that are not cleared by a reg-  
22          istered clearing agency.

23          “(B) NON-SWAP DEALERS AND MAJOR  
24          MARKET PARTICIPANTS.—The Prudential Regu-  
25          lators may, but are not required to, impose

margin requirements with respect to security-based swaps in which one of the counterparties is not a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant. Margin requirements for swaps set by the Commission and the Commodity Futures Trading Commission shall provide for the use of non-cash assets as collateral.

“(C) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

1           “(i) there is a Prudential Regulator,  
2           shall keep books and records of all activi-  
3           ties related to its business as a security-  
4           based swap dealer or major security-based  
5           swap participant in such form and manner  
6           and for such period as may be prescribed  
7           by the Commission by rule or regulation;  
8           or

9           “(ii) there is no Prudential Regulator,  
10          shall keep books and records in such form  
11          and manner and for such period as may be  
12          prescribed by the Commission by rule or  
13          regulation;

14          “(C) shall keep such books and records  
15          open to inspection and examination by any rep-  
16          resentative of the Commission; and

17          “(D) shall keep any such books and  
18          records relating to transactions in swaps based  
19          on 1 or more securities open to inspection and  
20          examination by the Commission.

21          “(2) RULES.—Not later than 1 year after the  
22          date of enactment of the Over-the-Counter Deriva-  
23          tives Markets Act of 2009, the Commission and the  
24          Commodity Futures Trading Commission, in con-  
25          sultation with the appropriate Federal banking agen-

1       cies, shall jointly adopt rules governing reporting  
2       and recordkeeping for swap dealers, major swap par-  
3       ticipants, security-based swap dealers and major se-  
4       curity-based swap participants.

5       “(g) DAILY TRADING RECORDS.—

6               “(1) IN GENERAL.—Each registered security-  
7       based swap dealer and major security-based swap  
8       participant shall maintain daily trading records of  
9       its security-based swaps and all related records (in-  
10      cluding related transactions) and recorded commu-  
11      nications including but not limited to electronic mail,  
12      instant messages, and recordings of telephone calls,  
13      for such period as may be prescribed by the Com-  
14      mission by rule or regulation.

15              “(2) INFORMATION REQUIREMENTS.—The daily  
16      trading records shall include such information as the  
17      Commission shall prescribe by rule or regulation.

18              “(3) CUSTOMER RECORDS.—Each registered se-  
19      curity-based swap dealer or major security-based  
20      swap participant shall maintain daily trading records  
21      for each customer or counterparty in such manner  
22      and form as to be identifiable with each security-  
23      based swap transaction.

24              “(4) AUDIT TRAIL.—Each registered security-  
25      based swap dealer or major security-based swap par-

1 participant shall maintain a complete audit trail for  
2 conducting comprehensive and accurate trade recon-  
3 structions.

4 “(5) RULES.—Not later than 1 year after the  
5 date of enactment of the Over-the-Counter Deriva-  
6 tives Markets Act of 2009, the Commission and the  
7 Commodity Futures Trading Commission, in con-  
8 sultation with the appropriate Federal banking agen-  
9 cies, shall jointly adopt rules governing daily trading  
10 records for swap dealers, major swap participants,  
11 security-based swap dealers, and major security-  
12 based swap participants.

13 “(h) BUSINESS CONDUCT STANDARDS.—

14 “(1) IN GENERAL.—Each registered security-  
15 based swap dealer and major security-based swap  
16 participant shall conform with business conduct  
17 standards as may be prescribed by the Commission  
18 by rule or regulation addressing—

19 “(A) fraud, manipulation, and other abu-  
20 sive practices involving security-based swaps  
21 (including security-based swaps that are offered  
22 but not entered into);

23 “(B) diligent supervision of its business as  
24 a security-based swap dealer;



1           “(C) adherence to all applicable position  
2           limits; and

3           “(D) such other matters as the Commis-  
4           sion shall determine to be necessary or appro-  
5           priate.

6           “(2) BUSINESS CONDUCT REQUIREMENTS.—  
7           Business conduct requirements adopted by the Com-  
8           mission shall—

9           “(A) establish the standard of care for a  
10          security-based swap dealer or major security-  
11          based swap participant to verify that any secu-  
12          rity-based swap counterparty meets the eligi-  
13          bility standards for an eligible contract partici-  
14          pant;

15          “(B) require disclosure by the security-  
16          based swap dealer or major security-based swap  
17          participant to any counterparty to the security-  
18          based swap (other than a swap dealer, major  
19          swap participant, security-based swap dealer or  
20          major security-based swap participant) of—

21                 “(i) information about the material  
22                 risks and characteristics of the security-  
23                 based swap;

24                 “(ii) the source and amount of any  
25                 fees or other material remuneration that

1           the security-based swap dealer or major se-  
2           curity-based swap participant would di-  
3           rectly or indirectly expect to receive in con-  
4           nection with the security-based swap; and

5           “(iii) any other material incentives or  
6           conflicts of interest that the security-based  
7           swap dealer or major security-based swap  
8           participant may have in connection with  
9           the security-based swap; and

10          “(C) establish such other standards and  
11          requirements as the Commission may determine  
12          are necessary or appropriate in the public inter-  
13          est, for the protection of investors, or otherwise  
14          in furtherance of the purposes of this title.

15          “(3) RULES.—Not later than 1 year after the  
16          date of enactment of the Over-the-Counter Deriva-  
17          tives Markets Act of 2009, the Commission and the  
18          Commodity Futures Trading Commission, in con-  
19          sultation with the appropriate Federal banking agen-  
20          cies, shall jointly prescribe rules under this sub-  
21          section governing business conduct standards for  
22          swap dealers, major swap participants, security-  
23          based swap dealers, and major security-based swap  
24          participants.

1       “(i) DOCUMENTATION AND BACK OFFICE STAND-  
2 ARDS.—

3               “(1) IN GENERAL.—Each registered security-  
4 based swap dealer and major security-based swap  
5 participant shall conform with standards, as may be  
6 prescribed by the Commission by rule or regulation,  
7 addressing timely and accurate confirmation, proc-  
8 essing, netting, documentation, and valuation of all  
9 security-based swaps.

10              “(2) RULES.—Not later than 1 year after the  
11 date of enactment of the Over-the-Counter Deriva-  
12 tives Markets Act of 2009, the Commission and the  
13 Commodity Futures Trading Commission, in con-  
14 sultation with the appropriate Federal banking agen-  
15 cies, shall jointly adopt rules governing documenta-  
16 tion and back office standards for swap dealers,  
17 major swap participants, security-based swap deal-  
18 ers, and major security-based swap participants.

19       “(j) DEALER RESPONSIBILITIES.—Each registered  
20 security-based swap dealer and major security-based swap  
21 participant at all times shall comply with the following re-  
22 quirements:

23              “(1) MONITORING OF TRADING.—The security-  
24 based swap dealer or major security-based swap par-  
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position  
2 limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-  
4 TION.—The security-based swap dealer or major se-  
5 curity-based swap participant shall disclose to the  
6 Commission and to the Prudential Regulator for  
7 such security-based swap dealer or major security-  
8 based swap participant, as applicable, information  
9 concerning—

10 “(A) terms and conditions of its security-  
11 based swaps;

12 “(B) security-based swap trading oper-  
13 ations, mechanisms, and practices;

14 “(C) financial integrity protections relating  
15 to security-based swaps; and

16 “(D) other information relevant to its trad-  
17 ing in security-based swaps.

18 “(3) ABILITY TO OBTAIN INFORMATION.—The  
19 security-based swap dealer or major swap security-  
20 based participant shall—

21 “(A) establish and enforce internal systems  
22 and procedures to obtain any necessary infor-  
23 mation to perform any of the functions de-  
24 scribed in this section; and

1           “(B) provide the information to the Com-  
2           mission and to the Prudential Regulator for  
3           such security-based swap dealer or major secu-  
4           rity-based swap participant, as applicable, upon  
5           request.

6           “(4) CONFLICTS OF INTEREST.—The security-  
7           based swap dealer and major security-based swap  
8           participant shall implement conflict-of-interest sys-  
9           tems and procedures that—

10           “(A) establish structural and institutional  
11           safeguards to assure that the activities of any  
12           person within the firm relating to research or  
13           analysis of the price or market for any security  
14           are separated by appropriate informational par-  
15           titions within the firm from the review, pres-  
16           sure, or oversight of those whose involvement in  
17           trading or clearing activities might potentially  
18           bias their judgment or supervision; and

19           “(B) address such other issues as the  
20           Commission determines appropriate.

21           “(5) ANTITRUST CONSIDERATIONS.—Unless  
22           necessary or appropriate to achieve the purposes of  
23           this Act, the security-based swap dealer or major se-  
24           curity-based swap participant shall avoid—

1           “(A) adopting any processes or taking any  
2           actions that result in any unreasonable re-  
3           straints of trade; or

4           “(B) imposing any material anticompeti-  
5           tive burden on trading.

6           “(k) RULES.—The Commission, the Commodity Fu-  
7           tures Trading Commission, and the Prudential Regulators  
8           shall consult with each other prior to adopting any rules  
9           under the Over-the-Counter Derivatives Markets Act of  
10          2009.

11          “(l) STATUTORY DISQUALIFICATION.—Except to the  
12          extent otherwise specifically provided by rule, regulation,  
13          or order of the Commission, it shall be unlawful for a secu-  
14          rity-based swap dealer or a major security-based swap par-  
15          ticipant to permit any person associated with a security-  
16          based swap dealer or a major security-based swap partici-  
17          pant who is subject to a statutory disqualification to effect  
18          or be involved in effecting security-based swaps on behalf  
19          of such security-based swap dealer or major security-based  
20          swap participant, if such security-based swap dealer or  
21          major security-based swap participant knew, or in the ex-  
22          ercise of reasonable care should have known, of such stat-  
23          utory disqualification.

24          “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-  
25          CEEDING AUTHORITY.—

1 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

2 “(A) SEC.—Except as provided in sub-  
3 section (b), the Commission shall have primary  
4 authority to enforce the provisions of the  
5 amendments made by subtitle B of the Over-  
6 the-Counter Derivatives Markets Act of 2009  
7 with respect to any person.

8 “(B) PRUDENTIAL REGULATORS.—The  
9 Prudential Regulators shall have exclusive au-  
10 thority to enforce the provisions of subsection  
11 (e) and other prudential requirements of this  
12 Act with respect to banks, and branches or  
13 agencies of foreign banks that are security-  
14 based swap dealers or major security-based  
15 swap participants.

16 “(C) REFERRAL.—If the Prudential Regu-  
17 lator for a security-based swap dealer or major  
18 security-based swap participant has cause to be-  
19 lieve that such security-based swap dealer or  
20 major security-based swap participant may have  
21 engaged in conduct that constitutes a violation  
22 of the nonprudential requirements of section  
23 15F or rules adopted by the Commission there-  
24 under, that Prudential Regulator may rec-  
25 ommend in writing to the Commission that the

1 Commission initiate an enforcement proceeding  
2 as authorized under this Act. The recommenda-  
3 tion shall be accompanied by a written expla-  
4 nation of the concerns giving rise to the rec-  
5 ommendation.

6 “(D) BACKSTOP ENFORCEMENT AUTHOR-  
7 ITY.—If the Commission does not initiate an  
8 enforcement proceeding before the end of the  
9 90 day period beginning on the date on which  
10 the Commission receives a recommendation  
11 under subparagraph (C), the Prudential Regu-  
12 lator may initiate an enforcement proceeding as  
13 permitted under Federal law.

14 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE  
15 AND HEARING.—The Commission, by order, shall  
16 censure, place limitations on the activities, functions,  
17 or operations of, or revoke the registration of any se-  
18 curity-based swap dealer or major security-based  
19 swap participant that has registered with the Com-  
20 mission pursuant to subsection (b) if it finds, on the  
21 record after notice and opportunity for hearing, that  
22 such censure, placing of limitations, or revocation is  
23 in the public interest and that such security-based  
24 swap dealer or major security-based swap partici-  
25 pant, or any person associated with such security-



1 based swap dealer or major security-based swap par-  
2 ticipant effecting or involved in effecting trans-  
3 actions in security-based swaps on behalf of such se-  
4 curity-based swap dealer or major security-based  
5 swap participant, whether prior or subsequent to be-  
6 coming so associated—

7 “(A) has committed or omitted any act, or  
8 is subject to an order or finding, enumerated in  
9 subparagraph (A), (D), or (E) of paragraph (4)  
10 of section 15(b);

11 “(B) has been convicted of any offense  
12 specified in subparagraph (B) of such para-  
13 graph (4) within 10 years of the commencement  
14 of the proceedings under this subsection;

15 “(C) is enjoined from any action, conduct,  
16 or practice specified in subparagraph (C) of  
17 such paragraph (4);

18 “(D) is subject to an order or a final order  
19 specified in subparagraph (F) or (H), respec-  
20 tively, of such paragraph (4); or

21 “(E) has been found by a foreign financial  
22 regulatory authority to have committed or omit-  
23 ted any act, or violated any foreign statute or  
24 regulation, enumerated in subparagraph (G) of  
25 such paragraph (4).

1           “(3) With respect to any person who is associ-  
2           ated, who is seeking to become associated, or, at the  
3           time of the alleged misconduct, who was associated  
4           or was seeking to become associated with a security-  
5           based swap dealer or major security-based swap par-  
6           ticipant for the purpose of effecting or being in-  
7           volved in effecting security-based swaps on behalf of  
8           such security-based swap dealer or major security-  
9           based swap participant, the Commission, by order,  
10          shall censure, place limitations on the activities or  
11          functions of such person, or suspend for a period not  
12          exceeding 12 months, or bar such person from being  
13          associated with a security-based swap dealer or  
14          major security-based swap participant, if the Com-  
15          mission finds, on the record after notice and oppor-  
16          tunity for a hearing, that such censure, placing of  
17          limitations, suspension, or bar is in the public inter-  
18          est and that such person—

19                 “(A) has committed or omitted any act, or  
20                 is subject to an order or finding, enumerated in  
21                 subparagraph (A), (D), or (E) of paragraph (4)  
22                 of section 15(b);

23                 “(B) has been convicted of any offense  
24                 specified in subparagraph (B) of such para-

1 graph (4) within 10 years of the commencement  
2 of the proceedings under this subsection;

3 “(C) is enjoined from any action, conduct,  
4 or practice specified in subparagraph (C) of  
5 such paragraph (4);

6 “(D) is subject to an order or a final order  
7 specified in subparagraph (F) or (H), respec-  
8 tively, of such paragraph (4); or

9 “(E) has been found by a foreign financial  
10 regulatory authority to have committed or omit-  
11 ted any act, or violated any foreign statute or  
12 regulation, enumerated in subparagraph (G) of  
13 such paragraph (4).

14 “(4) It shall be unlawful—

15 “(A) for any person as to whom an order  
16 under paragraph (3) is in effect, without the  
17 consent of the Commission, willfully to become,  
18 or to be, associated with a security-based swap  
19 dealer or major security-based swap participant  
20 in contravention of such order; or

21 “(B) for any security-based swap dealer or  
22 major security-based swap participant to permit  
23 such a person, without the consent of the Com-  
24 mission, to become or remain a person associ-  
25 ated with the security-based swap dealer or

1 major security-based swap participant in con-  
 2 travention of such order, if such security-based  
 3 swap dealer or major security-based swap par-  
 4 ticipant knew, or in the exercise of reasonable  
 5 care should have known, of such order.

6 “(5) RECOGNITION OF COMPARABLE NON-U.S.  
 7 REGULATION.—The Commission, in consultation  
 8 with the Secretary of the Treasury, the Commodity  
 9 Futures Trading Commission and the Prudential  
 10 Regulators, shall adopt rules exempting from reg-  
 11 istration and the other requirements of title I of the  
 12 Over-the-Counter Derivatives Market Act of 2009  
 13 foreign financial institutions that the Commission  
 14 finds are subject to comparable regulation in the fi-  
 15 nancial institution’s home country.”.

16 **SEC. 155. REPORTING AND RECORDKEEPING.**

17 (a) IN GENERAL.—The Securities Exchange Act of  
 18 1934 (15 U.S.C. 78a, et seq.) is amended by inserting  
 19 after section 13 the following section:

20 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**  
 21 **TAIN SECURITY-BASED SWAPS.**

22 “(a) IN GENERAL.—Any person who enters into a se-  
 23 curity-based swap and—

24 “(1) did not clear the security-based swap in  
 25 accordance with section 3A; and

1           “(2) did not have data regarding the security-  
2       based swap accepted by a security-based swap repos-  
3       itory in accordance with rules adopted by the Com-  
4       mission under section 13(n),  
5       shall meet the requirements in subsection (b).

6           “(b) REPORTS.—Any person described in subsection  
7       (a) shall—

8           “(1) make such reports in such form and man-  
9       ner and for such period as the Commission shall pre-  
10      scribe by rule or regulation regarding the security-  
11      based swaps held by the person; and

12           “(2) keep books and records pertaining to the  
13      security-based swaps held by the person in such  
14      form and manner and for such period as may be re-  
15      quired by the Commission, which books and records  
16      shall be open to inspection by any representative of  
17      the Commission, an appropriate Federal banking  
18      agency, the Commodity Futures Trading Commis-  
19      sion, the Financial Services Oversight Council, and  
20      the Department of Justice.

21           “(c) IDENTICAL DATA.—In adopting rules under this  
22      section, the Commission shall require persons described in  
23      subsection (a) to report the same or more comprehensive  
24      data than the Commission requires security-based swap  
25      repositories to collect under subsection (n).”.

1 (b) BENEFICIAL OWNERSHIP REPORTING.—

2 (1) Section 13(d)(1) of the Securities Exchange  
3 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by  
4 inserting “or otherwise becomes or is deemed to be-  
5 come a beneficial owner of any of the foregoing upon  
6 the purchase or sale of a security-based swap or  
7 other derivative instrument as the Commission may  
8 define by rule, and” after “Alaska Native Claims  
9 Settlement Act,”.

10 (2) Section 13(g)(1) of the Securities Exchange  
11 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by  
12 inserting “or otherwise becomes or is deemed to be-  
13 come a beneficial owner of any security of a class de-  
14 scribed in subsection (d)(1) upon the purchase or  
15 sale of a security-based swap or other derivative in-  
16 strument, as the Commission may define by rule”  
17 after “subsection (d)(1) of this section”.

18 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-  
19 AGERS.—Section 13(f)(1) of the Securities Exchange Act  
20 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting  
21 “or otherwise becomes or is deemed to become a beneficial  
22 owner of any security of a class described in subsection  
23 (d)(1) upon the purchase or sale of a security-based swap  
24 or other derivative instrument, as the Commission may de-  
25 fine by rule,” after “subsection (d)(1) of this section”.

1 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—  
 2 Section 15(b)(4) of the Securities Exchange Act of 1934  
 3 (15 U.S.C. 78o(b)(4)) is amended—

4 (1) in subparagraph (C), by inserting “security-  
 5 based swap dealer, major security-based swap partic-  
 6 ipant,” after “government securities dealer,”; and

7 (2) in subparagraph (F), by inserting “, or se-  
 8 curity-based swap dealer, or a major security-based  
 9 swap participant” after “or dealer”.

10 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-  
 11 tion 16(f) of the Securities Exchange Act of 1934 (15  
 12 U.S.C. 78p) is amended by inserting “or security-based  
 13 swaps” after “security futures products”.

14 **SEC. 156. STATE GAMING AND BUCKET SHOP LAWS.**

15 Section 28(a) of the Securities Exchange Act of 1934  
 16 (15 U.S.C. 78bb(a)) is amended to read as follows:

17 “(a) Except as provided in subsection (f), the rights  
 18 and remedies provided by this title shall be in addition  
 19 to any and all other rights and remedies that may exist  
 20 at law or in equity; but no person permitted to maintain  
 21 a suit for damages under the provisions of this title shall  
 22 recover, through satisfaction of judgment in one or more  
 23 actions, a total amount in excess of his actual damages  
 24 on account of the act complained of. Except as otherwise  
 25 specifically provided in this title, nothing in this title shall

1 affect the jurisdiction of the securities commission (or any  
2 agency or officer performing like functions) of any State  
3 over any security or any person insofar as it does not con-  
4 flict with the provisions of this title or the rules and regu-  
5 lations thereunder. No State law which prohibits or regu-  
6 lates the making or promoting of wagering or gaming con-  
7 tracts, or the operation of ‘bucket shops’ or other similar  
8 or related activities, shall invalidate (1) any put, call,  
9 straddle, option, privilege, or other security subject to this  
10 title (except a security-based swap agreement and any se-  
11 curity that has a pari-mutuel payout or otherwise is deter-  
12 mined by the Commission, acting by rule, regulation, or  
13 order, to be appropriately subject to such laws), or apply  
14 to any activity which is incidental or related to the offer,  
15 purchase, sale, exercise, settlement, or closeout of any  
16 such security, (2) any security-based swap between eligible  
17 contract participants, or (3) any security-based swap ef-  
18 fected on a national securities exchange registered pursu-  
19 ant to section 6(b). No provision of State law regarding  
20 the offer, sale, or distribution of securities shall apply to  
21 any transaction in a security-based swap or a security fu-  
22 tures product, except that this sentence shall not be con-  
23 strued as limiting any State antifraud law of general ap-  
24 plicability.”.



1 **SEC. 157. AMENDMENTS TO THE SECURITIES ACT OF 1933;**  
2 **TREATMENT OF SECURITY-BASED SWAPS.**

3 (a) DEFINITIONS.—Section 2(a) of the Securities Act  
4 of 1933 (15 U.S.C. 77b(a)) is amended—

5 (1) in paragraph (1), by inserting “security-  
6 based swap,” after “security future,”;

7 (2) in paragraph (3) by adding at the end the  
8 following: “Any offer or sale of a security-based  
9 swap by or on behalf of the issuer of the securities  
10 upon which such security-based swap is based or is  
11 referenced, an affiliate of the issuer, or an under-  
12 writer, shall constitute a contract for sale of, sale of,  
13 offer for sale, or offer to sell such securities,”; and

14 (3) by adding at the end the following:

15 “(17) The terms ‘swap’ and ‘security-based  
16 swap’ have the same meanings as provided in sec-  
17 tions 1a(35) and (38) of the Commodity Exchange  
18 Act (7 U.S.C. 1a(35) and (38)).

19 “(18) The terms ‘purchase’ or ‘sale’ of a secu-  
20 rity-based swap shall be deemed to mean the execu-  
21 tion, termination (prior to its scheduled maturity  
22 date), assignment, exchange, or similar transfer or  
23 conveyance of, or extinguishing of rights or obliga-  
24 tions under, a security-based swap, as the context  
25 may require.”.

1 (b) REGISTRATION OF SECURITY-BASED SWAPS.—

2 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)

3 is amended by adding at the end the following:

4 “(d) Notwithstanding the provisions of section 3 or  
5 section 4, unless a registration statement meeting the re-  
6 quirements of subsection (a) of section 10 is in effect as  
7 to a security-based swap, it shall be unlawful for any per-  
8 son, directly or indirectly, to make use of any means or  
9 instruments of transportation or communication in inter-  
10 state commerce or of the mails to offer to sell, offer to  
11 buy or purchase or sell a security-based swap to any per-  
12 son who is not an eligible contract participant as defined  
13 in section 1a(13) of the Commodity Exchange Act (7  
14 U.S.C. 1a(13)).”.

15 **SEC. 158. OTHER AUTHORITY.**

16 Unless otherwise provided by its terms, this subtitle  
17 does not divest any appropriate Federal banking agency,  
18 the Commission, the Commodity Futures Trading Com-  
19 mission, or other Federal or State agency, of any authority  
20 derived from any other applicable law.

21 **SEC. 159. JURISDICTION.**

22 Section 36 of the Securities Exchange Act of 1934  
23 (15 U.S.C. 78mm) is amended by adding at the end the  
24 following new subsection:

1       “(c) DERIVATIVES.—The Commission shall not have  
2 the authority to grant exemptions from the security-based  
3 swap provisions of the Over-the-Counter Derivatives Mar-  
4 kets Act of 2009, except as expressly authorized under the  
5 provisions of that Act.”.

6 **SEC. 160. EFFECTIVE DATE.**

7       This subtitle is effective 180 days after the date of  
8 enactment.

